[redacted]

[redacted]

CLARA PERET, OWNER OF THE CANAL-BOAT
W. PASSMORE, PLAINTIFF IN ERROR,

v.

CORNELIUS L. HAINES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF [redacted]

[redacted]

(18,197.)

(18,337.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 201.

CLARA PERRY, OWNER OF THE CANAL-BOAT "ROBERT W. PARSONS," PLAINTIFF IN ERROR,

vs.

CORNELIUS L. HAINES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Proceedings in supreme court, Niagara county	1	1
Petition	1	1
Exhibit A—Specifications	5	4
Bond	9	5
Warrant	11	6
Order to show cause	12	7
Affidavit of Clara Perry	13	7
Cornelius L. Haines	16	9
Exhibit A—Affidavit of Levi Perry	17	10
Stipulation as to facts, &c	19	11
Order for sale	20	11
Notice of sheriff's sale	22	12
Sheriff's return	22	12
Order to attend distribution of proceeds	23	13
Proof of publication of foregoing order	24	13
Answer of owner	26	14
Decree	29	16
Notice of appeal to appellate division	31	17
Clerk's certificate	32	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 4, 1902.

	Original.	Print
Proceedings in appellate division	33	18
Clerk's certificate	33	18
Order of affirmance	34	18
Decree of affirmance	35	19
Notice of appeal to court of appeals	36	19
Clerk's certificate	37	20
Proceedings in court of appeals	39	20
Remittitur	39	20
Clerk's certificate	40	21
Further proceedings in supreme court, Niagara county	41	21
Order for judgment on remittitur	41	21
Judgment on remittitur	42	22
Petition for writ of error	43	23
Assignment of errors	48	25
Bond on writ of error	52	26
Writ of error	58	29
Return on writ of error	61	30
Affidavit of service of citation	62	31
Citation	63	31
Clerk's certificate	65	32

1 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

To a justice of the supreme court of the State of New York, eighth judicial district:

The petition of Cornelius L. Haines, of the village of Middleport, county of Niagara, and State of New York, respectfully shows:

That your petitioner from the 9th day of May, 1899, to and including the 17th day of May, 1899, at the place of business of your petitioner in the village of Middleport, Niagara county, N. Y., at the special instance and request of Levi Perry, the captain and master of said canal-boat called "Rob't W. Parsons," which was at that time navigating on the Erie canal in the State of New York, furnished to said canal-boat or vessel, materials, supplies, articles, provisions and stores, as follows, to wit:

	Docking	$2.00
May	9. 6 hours' labor	1.50
"	10. 5 hours' labor	1.25
"	11. 18 hours' labor	4.50
"	12. 57 hours' labor	14.25
"	127 ft. oak	6.35
"	184 ft. pine	5.52
"	7 lbs. spike	.35
"	2 lbs. oakum	.40

2

"	25 lbs. iron	1.25
"	14 bolts, ⅝ x 10	1.40
"	1 lb. nuts	.10
"	13. 51 hours' labor	12.75
"	64 ft. oak	3.20
"	12 lbs. spike	.60
"	1 lb. oakum	.20
"	4 lbs. washers	.40
"	18 bolts, ½ x 12	1.80
"	15. 1 hour sawing and planing	1.00
"	15. 2 hours' sawing and planing	2.00
"	78 hours' labor	19.50
"	272 ft. oak	13.50
"	42 ft. pine	1.26
"	58 lbs. spike	2.90
"	8 lbs. oakum	1.60
"	4 lbs. cotton	.60
"	6 bolts, ⅝ x 6	.24
"	16. 68 hours' labor	17.00
"	32 ft. oak	1.60
"	50 lbs. spike	2.50

"		6 ft. pine	.18
"		8 lbs. oakum	1.60
"		5 lbs. cotton	1.00
"	17.	45 hours' labor	10.75
"		6 wood screws, $\frac{3}{8}$ x 8	.30
"		38 lbs. spike	1.90
"		1 lb. oakum	.20
"		2½ gal. paint	2.55
"		3 hours' forging	1.20
"		240 lbs. iron	12.00
"		9 bolts, $\frac{3}{8}$ x 12	.90
			$154.40

3 Your petitioner further shows that the person who contracted said debt was one Levi Perry, who was at that time captain and master of said canal-boat, and that the owner of said canal-boat is Mrs. Levi Perry.

Your petitioner further shows that no assignment or transfer of said debt has been made by Cornelius L. Haines, and that he is now the owner and holder thereof.

Your petitioner further shows that on the 29th day of May, 1899, your petitioner caused to be drawn up and executed specifications of lien against said canal-boat or vessel for the amount and items claimed as above set forth, which specifications consisted of a bill of particulars of said claim or demand of petitioner, and a statement of the amount claimed to be due from said vessel, the correctness of which was sworn to by your petitioner, Cornelius L. Haines, and which said specifications were on the 29th day of May, 1899, and within thirty days after said debt was contracted as above set forth, filed in the office of the clerk of the county of Niagara, that being the county in which said debt was contracted, and that immediately thereafter and on the 31st day of May, 1899, your petitioner caused a copy of said specifications, duly certified by the county clerk of Niagara county, N. Y., to be filed in the office of the comptroller of the State of New York, in the bureau of canal affairs at Albany, N. Y. That a copy of said specifications is hereunto annexed marked Exhibit A, and is hereby referred to and made a part of this petition.

And your petitioner further shows that twelve months have not expired since said debt was contracted.

4 Your petitioner further shows that there is due and owing to your petitioner by reason of the foregoing facts the sum of $154.40, the amount for which said lien was filed, less the sum of $90.10 paid to apply thereon, with interest from the 29th day of May, 1899, to wit: the sum of $64.30, with interest from May 29, 1899, and the same is claimed by your petitioner and is justly due your petitioner over and above all payments and just deductions.

Wherefore your petitioner prays that a warrant may be issued to the sheriff of any county to enforce said lien of your petitioner as

above set forth, and to collect the amount thereof pursuant to the provisions of the statute in such case made and provided.

Dated, November, 1899.

C. L. HAINES, *Petitioner.*

STATE OF NEW YORK, } ss:
County of Niagara, }

Cornelius L. Haines, being duly sworn, says he is the petitioner named in and who subscribed the foregoing petition; that he has heard the same read and knows its contents, and that the same is true to the knowledge of deponent except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

C. L. HAINES.

Sworn to before me this 6th day of November, 1899.

ANNA I. PHILLIPS,
Notary Public.

5

MIDDLEPORT, N. Y., *May* 17, 1899.

Boat Rob't W. Parsons, New York, to Middleport dry docks, Dr.

C. L. Haines, prop.

	Docking	$2.00
May	9. 6 hours' labor	1.50
"	10. 5 hours' labor	1.25
"	11. 18 hours' labor	4.50
"	12. 57 hours' labor	14.25
"	127 ft. oak	6.35
"	184 ft. pine	5.52
"	7 lbs. spike	.35
"	2 lbs. oakum	.40
"	25 lbs. iron	1.25
"	14 bolts, $\frac{5}{8}$ x 10	1.40
"	1 lb. nuts	.10
"	13. 51 hours' labor	12.75
"	64 ft. oak	3.20
"	12 lbs. spike	.60
"	1 lb. oakum	.20
"	4 lbs. washers	.40
"	18 bolts, $\frac{1}{2}$ x 12	1.80
"	15. 1 hour sawing and planing	1.00
"	15. 2 hours' sawing and planing	2.00
"	78 hours' labor	19.50
"	272 ft. oak	13.50
"	42 ft. pine	1.26
"	58 lbs. spike	2.90
"	8 lbs. oakum	1.60
"	4 lbs. cotton	.60
"	6 bolts, $\frac{3}{8}$ x 6	.24

6

" 16.	68 hours' labor	17.00
"	32 ft. oak	1.60
"	50 lbs. spike	2.50
"	6 ft. pine	.18
"	8 lbs. oakum	1.60
"	5 lbs. cotton	1.00
" 17.	45 hours' labor	10.75
"	6 wood screws, $\frac{5}{8}$ x 8	.30
"	38 lbs. spike	1.90
"	1 lb. oakum	.20
"	2½ gal. paint	2.55
"	3 hours' forging	1.20
"	240 lbs. iron	12.00
"	9 bolts, $\frac{5}{8}$ x 12	.90
		$154.40

Specifications of the lien of Cornelius L. Haines, of the village of Middleport, county of Niagara, State of New York, upon the canal-boat or vessel called the "Rob't W. Parsons," of New York, running and navigating upon the Erie canal and other inland waters of the State of New York.

That, as petitioner is informed and believes, the owner of said boat is one Mrs. Levi Perry, whose residence is at St. Johnsville, N. Y.

At the several and respective dates specified in the annexed written account, the undersigned at the village of Middleport, county of Niagara, State of New York, at the request of Capt. Levi Perry, the captain and master of said canal-boat or vessel called the "Rob't W.
7 Parsons," performed the work and services upon said canal-boat or vessel, and furnished to said canal-boat or vessel the materials, supplies, articles, provisions and stores which are respectively described in said account and are in said account charged at said dates respectively. And when said work and services were respectively done and performed, and when said materials, supplies, articles, provisions and stores were respectively furnished and delivered, the same and every part thereof were respectively fit and proper for the use of said canal-boat or vessel for and toward the repairing, fitting, furnishing, equipping and running said canal-boat or vessel, and were respectively worth the price charged therefor, respectively, in said annexed account, and there is now due and unpaid to the undersigned therefor the sum of one hundred and fifty-four dollars and forty cents over and above all payments, set-offs, discounts and counter-claims, for which sums the undersigned by reason of the premises and of the statutes in such case made and provided, claims to have a lien upon said canal-boat or vessel. Said annexed account forms a part of the specifications.

Dated, Middleport, N. Y., May 29, 1899.

CORNELIUS L. HAINES.

STATE OF NEW YORK, } ss:
County of Niagara, }

Cornelius L. Haines, being sworn, says that he resides in the village of Middleport, Niagara county, N. Y., and is the person named in the foregoing specifications, and all, each and every of the statements above and in the written account hereto annexed contained, are true and correct; and said specifications, and
8 the within account thereto annexed which forms part of the specifications, are correct and true.

CORNELIUS L. HAINES.

Sworn before me this 29th day of May, 1899.

ANNA I. PHILLIPS,
Notary Public.

9 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

Whereas, the above-named applicant, Cornelius L. Haines, has applied to a justice of the supreme court, having jurisdiction, for a warrant to enforce a lien of said applicant upon the canal-boat or vessel called the "Rob't W. Parsons," navigating upon the Erie canal, to collect the amount of his claim against the said canal-boat or vessel which is a lien thereupon as aforesaid.

Now therefore, we Cornelius L. Haines as principal, and James M. Odell as surety, all of the village of Middleport, county of Niagara, and State of New York, do hereby undertake jointly and severally, pursuant to the statute in such case made and provided, that if the said applicant, Cornelius L. Haines, does not within three months after the delivery thereof prosecute any bond that may be given upon the discharge of said warrant, or if the said applicant be finally adjudged in any action brought upon said bond not to have been entitled to such warrant, we will pay all costs that may be awarded against said applicant, Cornelius L. Haines, not exceeding the sum of $100.00, and also all damages that may be caused by the seizure of said vessel under such warrant not exceeding the sum of $50.00.

C. L. HAINES. [SEAL.]
J. M. ODELL. [SEAL.]

10 STATE OF NEW YORK, } ss:
County of Niagara, }

On this 7th day of November, 1899, before me the subscriber, personally appeared Cornelius L. Haines and James M. Odell, to me personally known to be the same persons described in, and who executed the foregoing instrument and they severally duly acknowledged to me that they executed the same.

ANNA I. PHILLIPS,
Notary Public.

STATE OF NEW YORK, } ss.:
County of Niagara, }

James M. Odell, being duly sworn, says he is a resident of and freeholder within the State of New York, and is worth the sum of five hundred dollars, over and above all debts or liabilities which he owes or has incurred and exclusive of property exempt from levy and sale on execution.

J. M. ODELL.

Sworn to before me this 7th day of November, 1899.

ANNA I. PHILLIPS,
Notary Public.

I hereby approve of the foregoing undertaking, both as to its form, manner of execution and as to the sufficiency of the sureties therein.

Dated November 8, 1899.

HENRY A. CHILDS,
Justice Supreme Court.

11 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

The People of the State of New York to the sheriff of any county, Greeting:

Whereas, an application has been made to me by Cornelius L. Haines for a warrant to enforce a lien against the canal-boat or vessel called "Rob't W. Parsons," claimed by the said Cornelius L. Haines of the village of Middleport, Niagara county, N. Y., to collect the amount thereof; and

Whereas, it appears by the said application or petition of said Cornelius L. Haines, which was presented on such application, that he has a lien on said canal-boat or vessel called "Rob't W. Parsons," for the sum of $64.30, with interest thereon from the 29th day of May, 1899, and that he has duly filed specifications thereof pursuant to the statute in such case made and provided, and that he is entitled to this warrant according to the provisions of said statute, and he having given and delivered the undertaking required by law, and it appearing that this application is in conformity to the provisions of the code of civil procedure and of the statute in such case made and provided and the laws amendatory thereof and supplementary thereto.

Now, therefore, you are hereby commanded and required to seize and safely keep said canal-boat or vessel called "Rob't W. Parsons,"

or either of them, with its tackle, apparel or furniture, to sat-
12 isfy said claim of Cornelius L. Haines as above set forth, to be a lien upon said vessel according to law, and make return of your proceedings herein to me within ten days after such seizure.

Dated, November 8, 1899.

HENRY A. CHILDS,
Justice Supreme Court.

GEORGE F. THOMPSON,
Attorney for Petitioner.

Office and P. O. address, Middleport, Niagara Co., N. Y.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

On reading and filing the petition of Cornelius L. Haines, verified November 6, 1899, showing that he has a lien on above-named canal-boat amounting to $64.30 with interest, and on reading and filing his undertaking thereupon, and a warrant having been duly issued by me for the seizure of such vessel,

Now, on motion of George F. Thompson, attorney for petitioner,

It is ordered that the master, or other person in charge of said vessel, and also that the owner and consignee thereof, show cause before me at supreme court chambers, city and county hall, in the city and county of Buffalo, county of Erie, N. Y., on the 28th day of November, 1899, at 2 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, why such vessel,
13 seized by virtue of such warrant, should not be sold to satisfy the lien specified in said application.

Dated, November 8, 1899.

HENRY A. CHILDS,
Justice Supreme Court.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

STATE OF NEW YORK, *County of Montgomery,* } *ss:*

Clara Perry, being duly sworn, deposes and says that she is the owner of the canal-boat "Robert W. Parsons," above named, and has been such owner for several years last past; that said canal-boat or vessel is about eighteen years old, and has been in commission during all of that time; that said canal-boat is of more than twenty tons burden, and has been since it was built employed in the business of commerce and navigation upon the Erie canal and Hudson river, in the State of New York, which are public navigable waters connecting the great lakes of Erie, St. Clair, Huron, Michigan and

Superior, and their tributary waters, with the Atlantic ocean, and upon which canal and river commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries, and said boat is also so employed in the harbor and bay of New York and the public navigable waters connecting the same, and said boat has
14 been so employed between ports and places in the State of New York, and between ports and places in different States. That the bill of repairs set forth in the petition upon which the warrant of attachment in the above-entitled proceeding was issued, is simply a bill of ordinary repairs of the vessel and not for building or rebuilding the same. The materials supplied, articles, labor, etc., referred to in said bill of repairs, were not furnished for the building or rebuilding of said boat, or for the fitting, furnishing and equipping of a boat not in commission, but were in the nature of ordinary repairs upon a vessel in active commission and navigation. That the specifications of lien filed, and the lien sought to be obtained thereby for such repairs, and to be enforced in this proceeding, are founded upon a maritime contract, and deponent claims that this court is without jurisdiction to proceed *in rem* against the said canal-boat, and therefore prays that the warrant of attachment issued against said vessel or canal-boat on the 8th day of November, 1899, and all proceedings had thereupon or thereunder be vacated and set aside, and that the sheriff who now has said vessel in custody be directed to deliver said canal-boat to deponent.

Deponent further says that by section 2, article III, of the Constitution of the United States, the judicial power of the courts of the United States extends to all cases of admiralty and maritime jurisdiction. That by sec. 563 of the Revised Statutes of the United States, subdivision 8th, the district courts of the United States are granted jurisdiction of all civil causes of admiralty and maritime jurisdiction, and such jurisdiction is thereby also made exclusive, except in the particular cases where jurisdiction of such causes and
15 seizures is given to the circuit courts. That in so far as the statutes of the State of New York give a lien and provide a remedy for enforcing the same *in rem* they are unconstitutional and contrary to the terms and provisions of the Constitution of the United States and of the statute of the United States, providing for jurisdiction in admiralty and maritime causes exclusively in the courts of the United States, and said statutes of the State of New York are therefore void and of no effect.

Deponent further says that at the time of the attachment of said vessel by the sheriff, and when the same was seized by him at Albany, New York, under and by virtue of the warrant issued in this proceeding, the said canal-boat or vessel had upon her and was carrying a cargo of lumber to W. R. Adams & Co., Atlantic basin, Brooklyn, New York, shipped at Buffalo, New York, and said vessel or canal-boat was so employed and engaged upon a voyage between the ports of Buffalo and Brooklyn, in the State of New York.

MRS. CLARA PERRY. [SEAL.]

Sworn to before me this 15th day of December, 1899.
M. WALRATH,
Justice of the Peace.

16 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

STATE OF NEW YORK, } ss:
County of Niagara, }

Cornelius L. Haines, being duly sworn, says he is a canal-boat builder, with dry docks and yards located at the village of Middleport, Niagara county, N. Y.; that the repairs specified in the bill of items attached to the specifications of lien in this proceeding were all for building permanent repairs upon the boat "Robert W. Parsons," to wit: A part of one side of said boat was taken out and her cheek plank removed, and the side of the boat and the cheek plank was rebuilt into said boat; that said repairs were performed upon said dry docks, in said yard in Middleport, N. Y., and the boat could not proceed without such repairs having been made at that time, and the condition of said boat was such at the time it was put on said dock that without such repairs it could not have navigated the canal further.

Deponent further says, that at the time said repairs were furnished said canal-boat was making a trip from the city of New York to Buffalo, and at the time the same was seized in this proceeding the said boat was making a trip from Buffalo to the city of Brooklyn, N. Y.; that said boat has no propelling power and the only way that it can be propelled is by horse-power or by being attached to some other craft having power of its own, and is of the type of boats
17 known as Erie canal-boats; that in order for said boat to be navigated outside the confines of the State of New York, it would be necessary to attach the same to some other boat.

C. L. HAINES.

Sworn to before me this 14th day of December, 1899.
ANNA I. PHILLIPS,
Notary Public.

An affidavit of Levi Perry was read in a motion to vacate the attachment in this proceeding, a copy of which is hereto attached marked Exhibit "A."

EXHIBIT "A."

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

COUNTY OF NEW YORK, *ss*:

Levi Perry, being duly sworn, deposes and says that he is the master of the canal-boat "Rob't W. Parsons" above named, and has been such for about three years last past, and is the husband of Clara Perry, the owner of said vessel.

That said vessel is about 18 years old and has been in commission during all of that time, running on the waters of the Erie canal and Hudson river since she was built some eighteen years ago as aforesaid, at Buffalo or Tonawanda, N. Y. That the bill of repairs set forth in the petition upon which the warrant of attachment in the above-entitled proceeding was issued is simply a bill for ordinary repairs of the vessel and not for building or rebuilding the same. That the materials, supplies, articles, labor, etc., referred to in said bill of repairs were not furnished for the building or rebuilding of said boat, or for the fitting, furnishing and equipping of a boat not in commission, but were in the nature of ordinary repairs upon a vessel in active commission and navigation, and deponent therefore claims as master of said vessel, and as agent of her owner, that this court is without jurisdiction to proceed *in rem* against the said canal-boat, and therefore prays that the warrant of attachment issued against said vessel by Hon. Henry A. Childs, a justice of the supreme court of the State of New York, on the 8th day of November, 1899, and all proceedings had thereupon or thereunder be vacated and set aside, and that the sheriff who now has said vessel in custody be directed to deliver said canal-boat to her owner.

18

Deponent further states, that at the time of the attachment of said vessel by the sheriff, in whose custody she now is, there was and still is on her a cargo of lumber consigned to W. R. Adams & Co., Atlantic bas., Brooklyn, N. Y., shipped at Buffalo, N. Y., on board of said vessel on or about November 1, 1899, by J. C. Anthony's Sons, which cargo of lumber is now being held and detained on board of said vessel at Albany, N. Y., by said sheriff by virtue of his seizure of said vessel under said warrant of attachment.

LEVI PERRY.

Sworn to before me this 20th day of November, 1899.

DANIEL J. AUGUSTINE,
Com. of Deeds, New York City.

19 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

The above-entitled proceeding coming on to be heard upon the order made herein by Hon. Henry A. Childs, justice of the supreme court, dated November 8, 1899, whereby the owner of said vessel or canal-boat was directed to show cause before said justice at supreme court chambers, city and county hall, in the city of Buffalo, N. Y., on the 28th day of November, 1899, why such vessel, seized by virtue of a warrant issued herein, should not be sold to satisfy the lien specified in said application, and the said proceedings having been duly adjourned to this day, and Clara Perry, the owner of said vessel or canal-boat, having made and filed her affidavit, sworn to on the 15th day of December, 1899, as an answer in said proceedings, and the said Cornelius L. Haines having read and filed his affidavit, sworn to on the 14th day of December, 1899, in support of said motion, it is hereby stipulated and agreed by and between the attorneys for the respective parties that the facts stated in said affidavits are to be deemed and taken as established in said proceeding, and that the said affiants respectively would testify to such facts herein;

And it being further stipulated and agreed that the said canal-boat or vessel was built as an Erie Canal boat, and that heretofore and on the day preceding the Dewey celebration in New York city, said vessel or canal-boat was loaded by the owner thereof at

20 the Hoboken, New Jersey, docks with a cargo consigned to Buffalo, New York.

It is further stipulated that the owner of said canal-boat shall not claim any damages by reason of the detention of said boat in these proceedings subsequent to the 6th day of December, 1899.

Dated, Buffalo, N. Y., December 18, 1899.

CLINTON & CLARK,
Attorneys for Owner, Clara Perry.
GEORGE F. THOMPSON,
Attorney for Cornelius L. Haines.

At a special term of the supreme court, held at the city and county hall, in the city of Buffalo, N. Y., in and for the eighth judicial district, in the State of New York, on the 18th day of December, 1899.

Present, Hon. Henry A. Childs, justice presiding.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

The order to show cause herein why such vessel seized by virtue of the warrant, issued for the seizure of such vessel, should not be sold to satisfy the lien specified in said application, having been returnable November 28, 1899, and by consent of all parties appearing, having been held until this day, and due proof of service of the

order to show cause and the publication of notice of seizure of said canal-boat, and service thereof having been filed, and upon
21 reading and filing the affidavit of Clara Perry, the owner of said canal-boat, sworn to December 15, 1899, in opposition to said motion, and the affidavit of Cornelius L. Haines in support thereof, and upon reading and filing the stipulation of the attorneys herein, after hearing George F. Thompson, Esq., attorney for said Cornelius L. Haines, petitioner, for said motion, and Martin Clark, Esq., of counsel for said owner, Clara Perry, in opposition thereto, it is

Ordered that said motion be and the same is hereby granted, and the sheriff of Albany county be, and he hereby is directed to sell said boat, "Robert W. Parsons," together with her tackle, apparel and furniture, to satisfy the lien of said Cornelius L. Haines, set forth in the petition herein, which is hereby established as set forth in said petition, together with the costs and expenses of these proceedings, and such sale, as provided by law.

And it is further ordered that said sheriff make such sale within ten days after the receipt by him of this order, and make a return to the justice issuing this order of all his proceedings hereunder, and that out of the proceeds of said sale he first deduct his fees and expenses of these proceedings and said sale, and pay the remainder of said proceeds into this court, subject to the further order of this court.

And it is further ordered that the order heretofore entered in this proceeding to the foregoing effect be vacated and set aside, and this order entered in Niagara county clerk's office in place thereof.

22 *Sheriff's Sale.*

COUNTY OF ALBANY, *ss:*

By virtue of special term order, issued out of the supreme court of the State of New York, to me directed and delivered, against the canal-boat, "Rob't W. Parsons," together with her tackle, apparel and furniture, I have seized and taken all the right, title and interest of said defendant in and to the following-described property, to wit: canal-boat, "Rob't W. Parsons," her tackle, apparel and furniture, which I shall expose to sale, as the law directs, on the 19th day of December, 1899, at 12 o'clock, noon, at the Capitol dock, foot of Columbia street, in the city of Albany.

Dated this 12th day of December, 1899.

CHAS. F. SCHIFFERDECKER, *Sheriff*,
By S. W. PITTS, *Under Sheriff*.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

I, the undersigned, Charles F. Schifferdecker, sheriff of the county of Albany, do hereby make return of my proceedings under the annexed orders, pursuant to the statute in such case made and pro-

vided, as follows: I received the first order hereunto annexed on the 12th day of December, 1899, and thereafter proceeded to advertise said boat for sale with her tackle, apparel and furniture,
23 pursuant to the provisions of the said order, by posting three notices thereof in three public and conspicuous places in the city of Albany, N. Y., a copy of which notice is hereunto annexed, marked Exhibit A, at least six days prior to the day of sale mentioned therein; that on the day of sale mentioned in said notice I proceeded to and did sell said boat, her tackle, apparel and furniture, at public auction and the same was finally struck off to George F. Thompson of Middleport, Niagara county, N. Y., for the sum of $155.00, he being the highest bidder therefor, and that being the highest sum bidden for the same; that out of said proceeds I have deducted the sum of $83.33, the same being my fees and expenses in seizing, preserving, watching and selling said vessel; that the balance of said proceeds, to wit, the sum of $71.67 is herewith returned, together with said orders herein.

Dated, December 19, 1899.

CHAS. F. SCHIFFERDECKER,
Sheriff of Albany County,
By S. W. PITTS, *Under Sheriff.*

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

An order to sell the canal-boat "Rob't W. Parsons" having been made herein and delivered to the sheriff of Albany county, and said sheriff having sold said boat pursuant to said order and made his return of his proceedings to me as the law requires, together with the proceeds thereof, which proceeds, after deducting said
24 sheriff's fees, amount to the sum of $71.67.

Now on motion of George F. Thompson, attorney for petitioner, notice is hereby given to all persons having liens upon said boat "Rob't W. Parsons," and the master, owner, agent or consignee thereof, and all persons interested therein are hereby required to appear before me at the supreme court chambers, at the city and county hall, in the city of Buffalo, Erie county, N. Y., on the 24th day of February, 1900, at 2 o'clock in the afternoon of that day to attend the distribution of such proceeds.

Dated, January 22, 1900.

HENRY A. CHILDS,
Justice Supreme Court.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

An order to sell the canal-boat "Rob't W. Parsons" having been made herein and delivered to the sheriff of Albany county, and said

sheriff having sold said boat pursuant to said order and made his return of his proceedings to me as the law requires, together with the proceeds thereof, which proceeds, after deducting said sheriff's fees, amount to the sum of $71.67.

Now on motion of George F. Thompson, attorney for petitioner, notice is hereby given to all persons having liens upon said boat "Rob't W. Parsons," and the master, owner, agent or consignee thereof, and all other persons interested therein are hereby
25 required to appear before me at the supreme court chambers, at the city and county hall, in the city of Buffalo, Erie county, N. Y., on the 24th day of February, 1900, at 2 o'clock in the afternoon of that day to attend the distribution of such proceeds.

Dated, January 22, 1900.

HENRY A. CHILDS,
Justice Supreme Court.

STATE OF NEW YORK, }
City and County of Albany, } ss:

Henry L. Baer, of the city of Albany, being duly sworn, says that he is foreman for the publishers of the Albany Evening Journal, a daily newspaper printed and published in the city and county of Albany aforesaid, and designated as "The State Paper," and that the notice, of which a printed copy is annexed, has been regularly published in the said Albany Evening Journal once in each week for three weeks, four times, successively, commencing on the 25th day of January, 1900, and ending on the 15th day of February, 1900.

HENRY L. BAER.

Sworn before me this 18th day of December, 1900.

JOHN M. DAVIS,
Notary Public.

26 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

Clara Perry, owner of the canal-boat, "Robert W. Parsons," proceeded against in the above-entitled proceeding, answering the petition herein of said Cornelius L. Haines, by Clinton & Clark, her attorneys, alleges:

That at all the times in said petition named she was and for a number of years last past has been the owner of the canal-boat "Robert W. Parsons." That said canal-boat is of more than twenty tons burden, and has been since it was built employed in the business of commerce and navigation upon the Erie canal and the Hudson river, in the State of New York, which are public navigable waters connecting the Great Lakes of Erie, St. Clair, Huron, Michigan and Superior, and their tributary waters with the Atlantic ocean, and upon which canal and river commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries, and said canal-

boat is and has been so employed in the harbor and upon the bay of New York and the public navigable waters connecting the same, and said boat has been so employed between the ports and places in the State of New York and between ports and places in different States. That the bill of repairs set forth in the petition upon which the warrant of attachment in the above-entitled proceeding was issued, is simply a bill of ordinary repairs of the vessel and not for building or rebuilding the same. That the materials, sup-
27 plies, articles, labor, etc., referred to in said bill of repairs were not furnished for the building or rebuilding of said boat, or for the fitting, furnishing and equipping of a boat not in commission, but were in the nature of ordinary repairs upon a vessel in active commission and navigation. That the specifications of lien filed, and the lien sought to be obtained thereby for such repairs and to be enforced in these proceedings, are founded upon a maritime contract, and the said owner claims that this court is without jurisdiction to proceed *in rem* against the said canal-boat.

Said owner, further answering said petition, alleges that by section 2, article 3, of the Constitution of the United States, the judicial power of the courts of the United States extends to all cases of admiralty and maritime jurisdiction. That by section 563 of the Revised Statutes of the United States, subdivision eighth, the district courts of the United States are granted jurisdiction of all civil causes of admiralty and maritime jurisdiction, and such jurisdiction is thereby also made exclusive, except in the particular cases where the jurisdiction of such causes and seizures is given to the circuit courts. That in so far as the statutes of the State of New York give a lien and provide a remedy for enforcing the same *in rem*, they are unconstitutional and contrary to the terms and provisions of the Constitution of the United States and of the statutes of the United States, providing for jurisdiction in admiralty and maritime causes exclusively in the courts of the United States, and said statutes of the State of New York are therefore void and of no effect.

Wherefore, the said owner of said canal-boat "Robert W.
28 Parsons," demands judgment dismissing the petition of said Cornelius L. Haines, and prays that all proceedings had thereupon or thereunder be vacated and set aside, and the possession of said canal-boat awarded to said owner, and that she be allowed her costs and expenses in this proceeding, and that she may have such other and further relief as shall be just and proper.

CLINTON & CLARK,
Attorneys for Owner, Clara Perry,
No. 1012 *Guaranty Building, Buffalo, N. Y.*

STATE OF NEW YORK, }
County of Montgomery, } *ss:*

Clara Perry, being duly sworn, deposes and says that she is owner of the canal-boat "Robert W. Parsons," named in the above-entitled proceeding; that she has read the foregoing answer and knows the contents thereof, and that the same is true of her own knowledge,

except as to those matters which are therein stated to be alleged upon information and belief, and that as to those matters she believes it to be true.

CLARA PERRY.

Sworn to before me this 20th day of February, 1900.

M. WALRATH,
Justice of the Peace.

29 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "ROB'T W. PARSONS."

An order having been made by the undersigned, Hon. Henry A. Childs, justice of the supreme court, on January 22, 1900, giving notice to all persons having liens on said boat, "Rob't W. Parsons," and the master, owner, agent or consignee thereof, and all persons interested therein, requiring them to appear before the undersigned at the supreme court chamber, in the city and county hall, in the city of Buffalo, Erie county, N. Y., on the 24th day of February, 1900, at 2 o'clock in the afternoon of that day, to attend the distribution of the proceeds of the sale of the said canal-boat herein, and due proof of publication and service of said notice having been filed and said distribution having been adjourned until this day;

Now, on motion of George F. Thompson, attorney for petitioner, and Martin Clark of counsel for Clara Perry, the owner of said boat, having appeared and filed an answer in opposition thereto, and it appearing that said owner appeared upon the return of the order to show cause herein and contested the claim of the petitioner and questioning the jurisdiction of the court in said proceedings, and the jurisdiction of the court having been sustained and an order of sale granted herein, and it appearing that the proceeds of said sale were the sum of $155.00, out of which the sheriff deducted the sum of $73.33, fee and expenses, leaving the balance for distribution $71.67, and due deliberation having been had,

30 It is ordered that said sheriff's fees and expenses be fixed and allowed at $73.33.

And it is further ordered, that the balance of the proceeds of said sale, to wit, the sum of $71.67, be distributed as follows:

That there be first paid to Cornelius L. Haines, or to George F. Thompson, his attorney, the following sums allowed herein as costs and disbursements, or in case there shall not be sufficient therefor, then that the said balance of said proceeds be paid to apply as follows:

That there first be paid to Cornelius L. Haines, or to George F. Thompson, his attorney, the sum of $2.35 expenses of filing said lien; the further sum of $20.00 statutory costs for exhibiting said lien; a further sum of $25.00 costs allowed by the undersigned justice in the order of the sale herein, and the further sum of $25.00 costs hereby allowed upon the distribution herein, to wit, the total sum of $72.33 costs and disbursements.

It appearing that the balance of the proceeds of said sale will be insufficient to pay said costs and expenses, for the reason it appears that there is nothing to be applied on the claim of the claimant herein.

It is further ordered that this order be entered *nunc pro tunc* as of March 7th, 1900, in the place and stead of order heretofore signed of that date.

Dated, November 20th, 1900.

HENRY A. CHILDS,
Justice Supreme Court.

31 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat, "Robert W. Parsons," CLARA PERRY, Owner, Appellant.

SIRS: You will please take notice that Clara Perry, the owner of the canal-boat, "Rob't W. Parsons," does hereby appeal to the appellate division of the supreme court, for the fourth department, from the final order made in the above-entitled proceedings, dated on the 20th day of November, 1900, and entered and filed in the office of the clerk of Niagara county, N. Y., on November 21st, 1900, and does so appeal from each and every part of said order.

And you will further take notice, that upon such appeal the said appellant intends to bring up for review the intermediate order made in said proceeding on the 18th day of December, 1899, directing the sale of said canal-boat to satisfy the lien specified in said application, also the intermediate order made in said proceeding on the 22d day of January, 1900.

Dated, Buffalo, N. Y., November 21, 1900.

Yours, etc.,
CLINTON & CLARK,
Attorneys for Appellant, Clara Perry,
1012 *Guaranty Bldg., Buffalo, N. Y.*

To George F. Thompson, Esq., attorney for respondent, Cornelius L. Haines, and Samuel H. Pettit, Esq., county clerk of Niagara county.

32 STATE OF NEW YORK, } ss:
County of Niagara, }

I, Samuel H. Pettit, county clerk of Niagara county, N. Y., do hereby certify that I have compared the foregoing papers constituting the papers on appeal to the appellate division in the above-entitled action, and consisting of petition of Cornelius L. Haines, undertaking on attachment, warrant of attachment, order to show cause of November 8, 1899, affidavit of Clara Perry of December 15, 1899, affidavit of Cornelius L. Haines of December 14, 1899, affidavit of Levi Perry of November 20, 1899, an Exhibit "A," stipulation of facts by attorneys, order to sell boat of December 18, 1899, report of sale by sheriff, order of distribution of January 22, 1900, notice to attend on distribution, proof of publication, answer of

owner, final order of distribution of November 20, 1900, notice of appeal, with the originals of such papers entered and on file in the Niagara county clerk's office, and that all the said papers are true and correct transcripts of the originals of each and all of said papers in said action, and of the whole thereof entered and on file in the office of the clerk of Niagara county, N. Y.

In witness whereof, I have hereunto set my hand and seal this 20th day of December, 1900.

SAMUEL H. PETTIT,
County Clerk.

33 Supreme Court, Appellate Division, Fourth Judicial Department.

CLERK'S OFFICE, ROCHESTER, N. Y.

I, Newell C. Fulton, clerk of the appellate division of the supreme court in the fourth judicial department, do hereby certify that the following is a copy of the order made by said court upon the appeal in the above-entitled action or proceeding and entered in my office on the 22d day of January, 1901, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof, I have hereunto set my hand and
[SEAL.] affixed the seal of said court, at the city of Rochester, this 23d day of January, 1901.

NEWELL C. FULTON.

34 At a term of the appellate division of the supreme court, held in and for the fourth judicial department, at the city of Rochester, on the 22d day of January, 1901.

Present: Honorable William H. Adams, presiding justice.
" Honorable Peter B. McLennan,
" Honorable Alfred Spring,
" Honorable Pardon C. Williams,
" Honorable Frank C. Laughlin,
Associate justices.

Order on Appeal from Order.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons," CLARA PERRY, Owner, Appellant.

The above-named Clara Perry, the appellant in this action, having appealed to the appellate division of the supreme court from an order of the supreme court entered in the office of the clerk of the county of Niagara on the 21st day of November, 1900, and the said appeal having been argued by Mr. Martin Clark, of counsel for the appellant, and by George F. Thompson, of counsel for the respondent, and due deliberation having been had thereon,

It is hereby ordered that the order so appealed from be and
35 the same is hereby affirmed, with costs, on opinion of Adams, P. J., in same case, reported in 52 App. Div., at page 550.

All concur, except Williams and Laughlin, J. J., who dissent upon the grounds stated in opinion of Williams, J., upon former appeal.

NEWELL C. FULTON, *Clerk.*

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons," CLARA PERRY, Owner, Appellant.

Clara Perry, the appellant in the above-entitled special proceeding, having appealed to the appellate division of the supreme court from a final order of the supreme court entered in the office of the clerk of the county of Niagara on the 21st day of November, 1900.

Now on motion of George F. Thompson, counsel for the respondent, and after hearing Mr. Martin Clark, of counsel for the appellant, in opposition thereto, and due deliberation having been had,

It is ordered that the said order so appealed from be, and
36 the same hereby is, in all things affirmed.

And it is further ordered that the appellant, Clara Perry, pay to the respondent, Cornelius L. Haines, herein the sum of $75.12, costs and disbursements of this appeal, and that the respondent have execution therefor.

Dated February 11, 1901.

EDWARD G. PARKER,
Deputy Clerk.

Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Repondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons," CLARA PERRY, Owner, Appellant.

GENTLEMEN: You will please take notice that the above-named Clara Perry, owner of the canal-boat "Robert W. Parsons," does hereby appeal to the court of appeals from an order of the appellate division made in said proceeding on the 22d day of January, 1901, and on that day entered in the office of the clerk of said appellate division, and on the 11th day of February, 1901, entered in the office of the county clerk of the county of Niagara affirming an
37 order made in said proceedings and entered in the office of said clerk on the 21st day of November, 1900, and does also hereby appeal to said court of appeals from the judgment of affirmance and for costs entered pursuant to said order of the appellate division in the office of the clerk of the county of Niagara on the 11th day of February, 1901, and does so hereby appeal to said court of appeals from each and every part of said order and judgment of affirmance.

Dated Buffalo, N. Y., February 25th, 1901.

Yours, etc., CLINTON & CLARK,
Attorneys for Appellant, 1012 *Prudential Building*,
Buffalo, N. Y.

To George F. Thompson, Esq., attorney for respondent. Samuel H. Pettit, Esq., county clerk of Niagara county.

STATE OF NEW YORK, } ss:
County of Niagara, }

I, Edward G. Parker, deputy clerk of the county of Niagara, N. Y., do hereby certify that I have compared the foregoing papers constituting the papers on appeal to the court of appeals in the above-entitled action, and consisting of petition of Cornelius L. Haines, undertaking on attachment, warrant of attachment, order to show cause on November 8th, 1899, affidavit of Clara Perry of December 15th, 1899, affidavit of Cornelius L. Haines of December 14th, 1899, affidavit of Levi Perry of November 20th, 1899, as "Exhibit A,"
38 stipulation of facts by attorneys, order to sell boat of December 18th, 1899, report of sale by sheriff, order of distribution of January 22d, 1900, notice to attend on distribution, proof of publication, answer of owner, final order of distribution of November 20th, 1900, notice of appeal to the appellate division, certified copy of order of affirmance of appellate division, judgment of affirmance and notice of appeal to the court of appeals, with the originals of such papers entered and on file in the Niagara county clerk's office, and that all the said papers are true and correct transcripts of the originals of each and all of said papers in said action and of the whole thereof entered and on file in the office of the clerk of Niagara county, N. Y.

In witness whereof, I have hereunto set my hand and seal this 28th day of February, 1901.

[SEAL.] EDWARD G. PARKER,
Deputy County Clerk.

39 STATE OF NEW YORK, *ss:*

Court of Appeals.

Pleas in the court of appeals, held at the capitol in the city of Albany, on the 10th day of July, in the year of our Lord one thousand nine hundred and one, before the judges of said court.

Witness the Hon. Alton B. Parker, chief judge presiding.

W. H. SHANKLAND, *Clerk.*

Remittitur, July 11th, 1901.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat Robert W. Parsons; CLARA PERRY, Owner, Appellant.

Be it remembered that on the 2nd day of March in the year of our Lord one thousand nine hundred and one, Clara Perry, owner, the appellant in this proceeding came here into the court of appeals by Clinton and Clark, her attorneys and filed in the said court a notice of appeal and return thereto from the order of the appellate division of the supreme court in and for the fourth judicial department. And Cornelius L. Haines the respondent in said proceeding afterwards appeared in said court of appeals by George F. Thompson, his attorney.

Which said notice of appeal and the return thereto filed as aforesaid are hereunto annexed.

Whereupon the said court of appeal- having heard this proceeding argued by Mr. Martin Clark of counsel for the appellant and by Mr. George F. Thompson of counsel for the respondent and after due deliberation had thereon did order and adjudge that the order of the appellate division of the supreme court appealed from
40 herein be and the same hereby is affirmed with costs.

And it was also further ordered, that the record aforesaid and the proceedings in this court be remitted to the said supreme court there to be proceeded upon according to law.

Therefore, it is considered that the said order be, and the same hereby is affirmed with costs as aforesaid and hereupon, as well *as* the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid by them given in the premises, are by the said court of appeals remitted into the supreme court of the State of New York before the justices thereof according to the form of the statute in such case made and provided to be enforced according to law and which record now remains in the said supreme court before the justices thereof, &c.

W. H. SHANKLAND,
Clerk of the Court of Appeals of the State of New York.

Court of appeals, clerk's office.

ALBANY, *July 11th*, 1901.

I, hereby certify, that the preceding record contains the correct transcript of the proceedings in said proceeding in the court of appeals with the papers originally filed therein, attached thereto.

[SEAL.] W. H. SHANKLAND, *Clerk.*

41 At a special term of the supreme court, held at the city and county hall in the city of Buffalo, in and for the eighth judicial district of the State of New York on the 26th day of July, 1901.

Present: Hon. Truman C. White, justice presiding.

Supreme Court, Niagara County.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner, Appellant.

On reading and filing the remittitur issued by the court of appeals under the hand of the clerk and the seal of said court, showing that the above-entitled proceeding was appealed to, argued in and deliberated upon by said court of appeals, and that said court have rendered judgment that the final order herein appealed from be affirmed with costs,

Now on motion of George F. Thompson, attorney for respondent,

Ordered that said order and judgment be and hereby is made the order and judgment of this court.

EDWARD G. PARKER,
Deputy Clerk.

Erie special term, Jul- 26, 1901.—Granted and ordered entered in Niagara county clerk's office.

PERRY E. WURST,
Sp. Dep. Clerk.

42 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner, Appellant.

Clara Perry, the appellant in the above-entitled special proceeding, having appealed to the appellate division of the supreme court and the order appealed from herein having been affirmed by an order of affirmance entered in the office of the clerk of Niagara county on the 11th day of February, 1901, and said Clara Perry having appealed to the court of appeals from said order made by the appellate division on January 22, 1901, and on that day entered in the office of the clerk of said appellate division and on the 11th day of February, 1901, entered in the office of the clerk of Niagara county affirming an order made in said proceeding and entered in the office of said clerk on November 21, 1900,

Now, on motion of George F. Thompson, of counsel for the respondent, and after hearing Mr. Martin Clark, of counsel for the appellant in opposition thereto, and due deliberation having been had, and the court of appeals having by its order affirmed said judgment and said order of affirmance, and remittitur thereon having been duly filed and made a judgment and order of this court,

It is ordered, that the said order entered in Niagara county clerk's office on February 11th, 1901, so appealed from be and the same hereby is in all things affirmed.

And it is further ordered that the appellant, Clara Perry, pay to the respondent, Cornelius L. Haines, herein the sum of one hundred and eighteen dollars and eighty-five cents ($118.85) costs and disbursements of this appeal and that the respondent have execution therefor.

Dated October 24, 1901, at 1 p. m.

EDWARD G. PARKER,
Deputy Clerk.

43 UNITED STATES OF AMERICA:

Supreme Court of the State of New York.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner.

Petition for Writ of Error.

Now comes the above-named Clara Perry, owner of the canal-boat "Robert W. Parsons," and says: That said proceeding *in rem* was commenced in the supreme court of the State of New York by the said Cornelius L. Haines to enforce a lien against the canal-boat "Robert W. Parsons," which said lien was acquired under the State statute for certain repairs made by said Haines upon said boat. The only defence made to the petition, and throughout the proceeding, was that the State court was without jurisdiction to proceed to enforce said lien *in rem*, it appearing that the said boat was of more than twenty tons burden, employed in the business of commerce and navigation upon the Erie canal and Hudson river, in the State of New York and upon the harbor and bay of New York and the public navigable waters connecting the same, and upon which canal, river, harbor and bay commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries, and said boat being so employed between ports and places in the State of New York and between ports and places in different States. That by the affidavit of defence and answer filed by said owner such jurisdiction
44 of said State court was denied and drawn in question on the ground that it was contrary to the provisions of art. III, sect. 2, of the Constitution of the United States, whereby it is provided that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction, and contrary to the provisions of sect. 536, sub. 8, of the Revised Statutes of the United States, whereby the district courts of the United States are granted jurisdiction of all civil causes of admiralty and maritime jurisdiction, and such jurisdiction is thereby also made exclusive except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts; and the said Clara Perry claimed the right and privilege of having said proceeding to enforce said lien instituted and conducted, and the liability of the boat owned by her for the repairs for which said lien was claimed determined, in the courts of the United States under said statutes of the United States, and the decision of said State court is against such right and privilege specially set up and claimed by said Clara Perry under such Constitution and statute.

That a final order of the supreme court of the State of New York was entered as of March 7th, 1900, in the clerk's office of the county of Niagara, in the said State, in favor of the above-named petitioner, overruling said affidavit of defence and the answer filed by said owner, and sustaining the jurisdiction of said court, and an order of

sale having theretofore been granted, distributing the proceeds arising from said sale; that an appeal from said final order was duly taken to the appellate division of the supreme court for the fourth department, and said appeal having been duly argued, the said final order so appealed from was by the said appellate division affirmed on the 22nd day of January, 1901, and a judgment of affirmance entered in the office of the clerk of Niagara county on the 11th day of February, 1901; that said owner duly appealed from said
45 order and judgment of affirmance to the court of appeals of the State of New York, and thereafter, and on the 10th day of July, 1901, an order or decree affirming said order and judgment so appealed from was made by said court of appeals, which is the highest court of said State in which a decision in the suit could be had, without any opinion being written by said court of appeals, and thereafter and on the 25th day of July, 1901, upon the remittitur from said court of appeals into the supreme court of the State of New York, according to the form of the statute in such case made and provided to be enforced according to law, an order was made by said supreme court making the order and judgment of the court of appeals the order and judgment of said supreme court and a final judgment of affirmance, and for $118.85 costs in favor of said Cornelius L. Haines and against said Clara Perry was on the 24th day of October, 1901, entered in the office of the clerk of Niagara county, in said State, by which said judgment said Clara Perry was aggrieved in that in said judgment and the proceedings had prior thereunto in this cause several errors were committed to the prejudice of said Clara Perry, and that said court proceeded without jurisdiction in said cause, all of which more fully appears from the assignment of errors filed with this petition.

Wherefore, said Clara Perry hereby prays that a writ of error from said decision and judgment may issue to the supreme court of the State of New York, or to the proper court for the correction of the errors complained of, and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the said Supreme Court of the United States.

Assignment of errors herewith.

CLARA PERRY,
By MARTIN CLARK,
Her Attorney.

46 STATE OF NEW YORK, } ss:
County of Erie, }

Martin Clark, being duly sworn, says that he has read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; and deponent further says that all of the matters stated in said petition are within the personal knowledge of deponent.

MARTIN CLARK.

Sworn to before me, this 18th day of Nov., 1901.

H. H. CULVER,
Notary Public, Erie Co., N. Y.

47 [Endorsed:] Supreme court. In the matter of the application of Cornelius L. Haines against the canal-boat Robert W. Parsons. Petition for writ of error. Martin Clark, att'y for pl'ff in error.

48 UNITED STATES OF AMERICA:

Supreme Court of the State of New York.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal boat "Robert W. Parsons;" CLARA PERRY, Owner.

Assignment of Errors.

Now comes the above-named Clara Perry and files herewith her petition for a writ of error, and says that there are errors in the records and proceedings of the above-entitled proceeding, and, for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignment of errors.

The supreme court of the State of New York and the court of appeals of said State, which is the highest court of said State in which a decision in the said suit could be had, erred in holding and deciding by the final judgment or decree entered in said suit that the said court had jurisdiction to enforce by proceedings *in rem*, pursuant to the statutes of said State, a lien acquired under said statutes for making repairs to a boat of more than twenty tons burden, employed in the business of commerce and navigation upon the Erie canal and Hudson river, in the State of New York, and upon the harbor and bay of New York and the public navigable waters connecting the same, and upon which canal, river, harbor and bay commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries, and said boat being so employed between ports and

49 places in the State of New York and between ports and places in different States, contrary to the provisions of art. III, sect. 2, of the Constitution of the United States, whereby it is provided that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction, and contrary to the provisions of sect. 536 of the Revised Statutes of the United States, sub. 8th, whereby the district courts of the United States are granted jurisdiction of all civil causes of admirality and maritime jurisdiction, and such jurisdiction is thereby also made exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the circuit courts.

Such jurisdiction of said State courts was denied and drawn in question by said Clara Perry, owner of said boat, on the ground that it was repugnant to the Constitution and statutes aforesaid, of

the United States, and in contravention thereof, and she claimed the right and privilege of having said proceedings to enforce said lien instituted and conducted, and the liability of the boat owned by her for the repairs for which said lien was claimed, determined, in the courts of the United States under said statutes of the United States, and the decision of said courts is against such right and privilege specially set up and claimed by said Clara Perry under such Constitution and statutes.

There is error also in this, to wit: that by the record aforesaid it appears that the judgment aforesaid was given for the said Cornelius L. Haines directing a sale of the boat "Robert W. Parsons" to satisfy the lien and claim of said Haines and a distribution of the proceeds arising from such sale in the proceedings aforesaid, whereas by the law of the land, and pursuant to the provisions of art. III, sect. 2, of the Constitution of the United States, and sect. 536, sub. 8, of the Revised Statutes of the United States, the proceedings aforesaid should have been dismissed by said State courts for want
50 of jurisdiction, and a judgment ought to have been given for said Clara Perry against said Cornelius L. Haines.

For which errors aforesaid, and other errors in the record and proceedings aforesaid, the said Clara Perry prays that the judgment aforesaid be reversed and a judgment entered for said Clara Perry and for costs.

MARTIN CLARK,
Attorney for Clara Perry.

51 [Endorsed:] Supreme court. In the matter of the application of Cornelius L. Haines against the canal-boat Robert W. Parsons. Assignment of errors. Martin Clark, att'y for pl'ff in error.

52 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES, Respondent, to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner, Appellant. 89941. K. J. P.

Know all men by these presents, that we, Clara Perry, as principal, and American Surety Company of New York, having an office and principal place of business at No. 100 Broadway, in the city of New York, as surety, are held and firmly bound unto Cornelius L. Haines, respondent, above named, in the sum of five hundred dollars ($500) to be paid to the said Cornelius L. Haines, his executors or administrators, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated the 22nd day of August, 1901.

Whereas, the above-named appellant, Clara Perry, has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above-entitled cause, entered in the supreme court of the State of New York, on the — day of —— 1901, pursu-

ant to the order or judgment of the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in the said suit,

Now, therefore, the condition of this obligation is such that if the above-named Clara Perry shall prosecute said writ to effect and answer all costs and damages, if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and virture.

MRS. CLARA PERRY. [L. S.]
AMERICAN SURETY COMPANY OF NEW YORK,
By H. B. ZEVELY, *Vice-President.*
E. F. WATSON, *Attorney.*

[L. S.]
[L. S.]

STATE OF NEW YORK, } ss:
County of Montgomery, }

On this 22nd day of August, 1901, before the subscriber personally appeared Clara Perry to me known and known to me to be the same person described in and who executed the foregoing instrument, and who duly acknowledged to me that she executed the same.

M. WALRATH,
Justice of the Peace.

[L. S.]

53 STATE OF NEW YORK, } ss:
County of New York, }

H. B. Zevely, vice-president of the American Surety Company of New York, being duly sworn, deposes and says that said company is a domestic corporation and a freeholder within said county, in the State of New York, and that it is worth the sum of one thousand dollars ($1000) over and above all its debts and liabilities which it owes or has incurred, and exclusive of property exempt by law from levy and sale under an execution.

H. B. ZEVELY.

Subscribed and sworn to before me, this 27th day of August, 1901

[L. S.]

K. J. PEIRCEY,
Notary Public, Kings Co.

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland and Nassau Co's.

54 STATE AND COUNTY OF NEW YORK, ss:

On this 27th day of Aug. 1901, before me personally appeared H. B. Zevely, vice-president of the American Surety Company of New York, to me known, who being by me duly sworn, did depose and say that he resided in the city of New York; that he is the vice-president of the American Surety Company of New York, the corporation described in and which executed the above instrument;

that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said H. B. Zevely further said that he was acquainted with E. F. Watson, and knew him to be one of the attorneys of said corporation, that the signature of said E. F. Watson, subscribed to the said instrument, is in the genuine handwriting of the said E. F. Watson, and was thereto subscribed by the like order of the said board of directors, and in the presence of him the said H. B. Zevely, vice-president.

[L. S.] K. J. PEIRCEY,
Notary Public, Kings Co.

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland and Nassau Co's.

At a regular quarterly meeting of the board of trustees of the American Surety Company of New York, held on the 12th day of April, 1893, the following resolution was adopted:

"*Resolved*, That the president and vice-president be and they hereby are, and each one of them is authorized and empowered to execute and deliver, and attach the seal of the company to any and all bonds and undertakings for, or on behalf of the company, in its business of guaranteeing the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings by law allowed; such guarantee, bonds and undertakings, however, to be attested in every instance by the secretary, one of the assistant secretaries, or one of the attorneys."

COUNTY OF NEW YORK, *ss:*

I, E. F. Watson, attorney of the American Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a correct and true transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company at the city of New York, this 27 day of Aug., 1901.

[L. S.] E. F. WATSON, *Attorney.*

55 STATE OF NEW YORK, *County of New York,* } *ss:*

E. F. Watson, being duly sworn, says: That he is an attorney of the American Surety Company of New York; that said company is a corporation duly created, existing and engaged in business as a surety company under and by virtue of the laws of the State of New York, and has duly complied with all the requirements of the laws of said State applicable to said company, and is duly qualified to act

as surety under such laws. That said company has also duly complied with and is duly qualified to act as surety under the act of Congress of August 13, 1894, entitled "An act relative to recognizances, stipulations, bonds and undertakings and to allow certain corporations to be accepted as surety thereon;" that the within is a true copy of the last statement of the assets and liabilities of said company as rendered pursuant to section 4 of said act of Congress; that said American Surety Company of New York is worth more than $2,500,000 over and above all its debts and liabilities and such exemptions as may be allowed by law.

E. F. WATSON.

Subscribed and sworn before me this 27th day of August, 1901.

K. J. PEIRCEY,

[SEAL.] *Notary Public, Kings Co.*

Certificate filed in New York, Queens, Richmond, Westchester, Dutchess, Putnam, Orange, Suffolk, Rockland & Nassau Co's.

56 The original of the foregoing supersedeas bond was lodged with the clerk of the supreme court, Niagara county in the State of New York on November 29 1901 and the following endorsement made thereon: Bond, filed November 29 1901.

SAMUEL H. PETTIT,
Clerk Supreme Court.

57 [Endorsed:] Supreme Court In the matter of the application of Cornelius L. Haines to enforce a lien against the canal-boat Robert W. Parsons Clara Perry owner Copy Bond on writ of error Martin Clark att'y for pl'ff in error Approved Signed R. W. Peckham associate justice of Supreme Court U. S.

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, on a remittitur from the court of appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in the said suit In the matter of the application of Cornelius L. Haines to enforce a lien against the canal-boat "Robert W. Parsons," Clara Perry, owner, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commis-

sion held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Clara Perry, owner of the canal-boat "Robert W. Parsons," as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judg-
59 ment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty (30) days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Seal of the Supreme Court of the United States.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of November, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by,

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

60 [Endorsed:] Supreme Court In the matter of the application of Cornelius L. Haines against the canal-boat Robert W. Parsons Writ of error Martin Clark att'y for pl'ff in error No. 91 Erie Co. Sav'gs B'k build., Buffalo N. Y. Niagara county clerk's office, Filed Nov. 29 1901.

61 The original of the foregoing writ of error was lodged with the clerk of the supreme court, Niagara county, in the State of New York, on November 29th, 1901, and also, at the same time and place, a copy thereof for the said defendant, Cornelius L. Haines, the same being addressed personally to the said defendant. The following endorsement was made upon the said original writ and upon the said copy:

Writ of error. Flied November 29th, 1901, at 3 p. m.

SAMUEL H. PETTIT,
Clerk of the Supreme Court, Niagara County, N. Y.

62 Supreme Court.

In the Matter of the Application of CORNELIUS L. HAINES to Enforce a Lien against the Canal-boat "Robert W. Parsons;" CLARA PERRY, Owner.

STATE OF NEW YORK,
County of Erie, City of Buffalo, } *ss:*

Ezra P. Reynolds, being duly sworn, deposes and says that he is upwards of twenty-one years of age, and resides in the city of Buffalo, N. Y.; that on the 23rd day of November, 1901, at the city of Lockport, N. Y., he personally served the annexed citation upon Cornelius L. Haines, above named, by delivering to and leaving with him a true copy thereof; and deponent further says, of his own knowledge he knew the person so served to be the same person mentioned and described in said citation as the defendant in error in this proceeding.

EZRA P. REYNOLDS.

Sworn to before me this 25th day of November, 1901.

[Seal Henry H. Culver, Notary Public, Erie Co., N. Y.]

H. H. CULVER,
Notary Public in and for Erie County, N. Y.

63 UNITED STATES OF AMERICA, *ss:*

To Cornelius L. Haines, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of New York, wherein Clara Perry is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, associate justice of the Supreme Court of the United States, this 20th day of November, in the year of our Lord one thousand nine hundred and one.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

64 [Endorsed:] Supreme Court. In the matter of the application of Cornelius L. Haines against the canal-boat Robert W. Parsons. Citation. Martin Clark, att'y for pl'ff in error.

65 *Return to Writ.*

UNITED STATES OF AMERICA,
Supreme Court of New York, } ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within-entitled case, with all things concerning the same;

In witness whereof, I hereunto subscribe my name and affix the seal of said supreme court, in the city of Lockport, in the county of Niagara, this 29th day of Nov., 1901.

SAMUEL H. PETTIT,
County Clerk of Niagara County and Clerk of the Supreme Court of the State of New York.

Costs of transcript, $1.50, paid by Clara Perry.

[Seal Niagara County.]

SAMUEL H. PETTIT,
Clerk of Supreme Court, State of New York.

Endorsed on cover: File No. 18,337. New York supreme court. Term No. 201. Clara Perry, owner of the canal-boat "Robert W. Parsons," plaintiff in error, *vs.* Cornelius L. Haines. Filed December 2nd, 1901.

No. 201.

Supreme Court of the United States

OCTOBER TERM, 1902.

CLARA PERRY, OWNER OF THE CANAL-BOAT "ROBERT W. PARSONS,"

Plaintiff in Error,

vs.

CORNELIUS L. HAINES,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The sole question involved in this case is as to the jurisdiction of the District Court of the United States, as a Court of Admiralty, over the Erie Canal, or, in other words, whether the Supreme Court of the State of New York has jurisdiction to enforce a lien *in rem* given by the state statute, or whether such lien can be enforced *in rem* only in the Admiralty courts of the United States.

The defendant in error during the period from May 9, 1899, to May 17th, 1899, at Middleport, in the State of New York, at the request of the master of the canal boat "Robert W. Parsons," furnished certain materials and performed certain labor in making repairs upon said boat for which, on May 29th, 1899, he filed a lien pursuant to the General Lien Law (Chap. 418 of the laws of 1897). Thereafter, and on No-

vember 8th, 1899, upon his petition, proceedings were commenced under section 3419, *et seq.*, of the Code of Civil Procedure to enforce said lien against said boat, and a warrant was issued in accordance with the provisions of the Code, to the Sheriff of any county, directing him to seize and safely keep said boat and hold the same to satisfy said claim; at the same time an order to show cause was granted, returnable on November 28th, 1899, why such vessel so seized should not be sold to satisfy the said lien. Before the return day of said order a motion was made based practically upon the papers of petitioner alone, to vacate said attachment upon the ground that the Court did not have jurisdiction. This motion was denied and an appeal was taken from the order denying the same to the Appellate Division of the Supreme Court. This appeal was argued, and said Appellate Division rendered a decision affirming the order appealed from, three Judges concurring in the affirmance with an opinion by Chief Justice Adams, and the other two Judges dissenting, Justice Williams writing the opinion.

Matter of Haynes, 52 Ap. Div. (Sup. Ct. Rep.) 550.

For the convenience of the Court there is appended to this brief a copy of the two opinions rendered upon said appeal, as these are the only opinions which have been given by any Court in this case.

The motion of the owner to dismiss the proceedings having been denied, the proceedings were continued while the appeal was pending, and the owner filed her affidavit (pages 7 and 8) in answer to the petition upon the return of the order to show cause, and, upon the motion for the final order, filed an answer thereto (pages 14 and 15) again raising the question of jurisdiction. From the final order the owner again appealed to the Appellate Division, where the order was affirmed upon the opinion rendered upon the former appeal.

In re Haines, 57 Ap. Div. (Sup. Ct. Rep.) 636.

From the order of affirmance the owner appealed to the Court of Appeals. There the order was affirmed without opinion.

In re Haines, 168 N. Y., 586.

Thereupon this writ of error was sued out from this Court.

The only defense made to the petition and throughout the proceedings, was (pp. 7, 8, 14 and 15) that the State Court was without jurisdiction to proceed to enforce the lien, as it was based upon a maritime contract and should, therefore, only be enforced by proceedings in the United States District Court, inasmuch as these courts are by the Constitution and Laws of the United States given exclusive jurisdiction in proceedings *in rem* in maritime and admiralty cases.

U. S. Const., Art. 3, Sect. 2.
U. S. Rev. Stat., Sect. 563, Sub. Div. 8.

There is no dispute as to the facts. By the stipulation of the parties (p. 11) the facts stated in the affidavit of Clara Perry (pps. 7 and 8) and in the affidavit of Cornelius L. Haines (p. 9) are to be deemed and taken as established in this proceeding.

The boat in question is of more than twenty tons burden and is of the type of boats known as Erie canal boats, without propelling power of its own, but obliged to be towed. For eighteen years it has been employed in commerce and navigation upon the Erie canal and Hudson river, and in the harbor and bay of New York, and the public navigable waters connecting the same, and

> "Has been so employed between ports and places in the State of New York and between ports and places in different states,"

And one specific instance is admitted where the boat was so employed in the season of 1899, in which these repairs were made and the boat seized therefor, between a port of the State of New Jersey and a port of the State of New York.

The specifications of lien (p. 4) which are made part of the petition, the affidavit of Clara Perry, the owner (p. 7), the affidavit of Cornelius L. Haines, the petitioner (p. 9), the affidavit of the master, Levi Perry (p. 10), all show that the work done and materials furnished, for which a lien is claimed and sought to be enforced, were all for making repairs upon the boat at the special instance and request of the master, and were not furnished for building the boat. The lien, therefore, is founded upon a maritime contract. Seizure under the warrant was made the latter part of November, 1899, at Albany, N. Y., while the boat was upon a trip from Buffalo to Brooklyn, N. Y., with a cargo of lumber shipped from Buffalo, November 1st, 1899, consigned to a firm in Brooklyn.

Specification of Errors.

1. The State Courts erroneously held that such courts have jurisdiction to enforce by proceedings *in rem* a lien acquired under the State statute for making repairs to a boat of more than twenty tons burden, employed in the business of commerce and navigation upon the Erie canal and Hudson River, in the State of New York, and upon the harbor and bay of New York, and the public navigable waters connecting the same, and upon which canal, river, harbor and bay commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries, and said boat being so employed between ports and places in the State of New York and between ports and places in different States.

2. The State Courts erroneously held that the District Courts of the United States did not have exclusive jurisdiction in such cases.

3. The State Courts erroneously refused to dismiss the proceedings herein for want of jurisdiction.

I.

The original statute of New York providing for liens on vessels was Chap. 482 of the Laws of 1862. By this act it was provided what debts should be a lien, when, how, and where specifications of liens should be filed, and the method of procedure for enforcing them *in rem* by attachment, etc.

This act, however, in so far as it provided for the enforcement of maritime claims *in rem*, was held unconstitutional and infringed upon the exclusive jurisdiction of the Federal Courts over that class of cases.

In re Josephine, 39 N. Y., 19.
Brookman vs. Hamill, 43 N. Y., 554.
Hine vs. Trevor, 4 Wall., 555.
Vose vs. Cockcroft, 44 N. Y., 415.
Poole vs. Kermit, 37 N. Y., Super. Ct., 114.
The Belfast, 7 Wall., 624.

II.

In 1897, the Legislature in enacting a general law in relation to liens (Chap. 418, Laws of 1897, being Chap. XLIX of the General Laws), provided by Art. II. for liens on vessels. The several sections providing for a lien, how obtained, duration, etc., are substantially the same as the Law of 1862 as amended, in force at the time of the adoption of the General Law. All prior laws were thereby repealed.

When it came to providing for the enforcement of the lien, however, the Legislature recognized the force and effect of the above decisions and said: (Sec. 35) "If a lien, created by virtue of this article, is founded upon a maritime contract, it can be enforced only by proceedings in the Courts of the United States, and in any other case, in the courts of this State, in the manner provided by the Code of Civil Procedure."

From this it will be seen that two methods were provided for enforcing the lien, depending upon the contract, whether maritime or not. This was necessary, as the statute provides for a lien where labor or materials are furnished under a contract for building a boat, which the courts uniformly hold is not a maritime contract, and in such a case it must be enforced in the courts of the State, as a court of admiralty would not have jurisdiction of it.

Wilson vs. Lawrence, 82 N. Y., 409, p. 411.
The J. E. Rumbell, 148 U. S., 1.
Citing The Jefferson, 20 How., 393.
The Capitol, 22 How., 129.
Edwards vs. Elliott, 21 Wall, 532.

So that in determining upon the remedy or the forum, it is necessary to determine first whether or not the contract upon which the lien is based is a maritime contract. If it is, then under the statute, as well as under the authorities,

> "it can be enforced *only* by proceedings in the Courts of the United States."

As we have stated, the labor and materials, for which a lien is claimed in this case, were furnished in making repairs, and this is not disputed.

That a contract for making repairs upon a boat is a maritime contract is settled beyond question.

The General Smith, 4 Wheat, 438.
The St. Lawrence, 1 Black, 522.
Peyroux vs. Howard, 7 Peters, 324.
The Lottawanna, 21 Wall, 558.

In the case of the Lottawanna, *supra* the Court says:

> "It seems to be settled in our jurisprudence that so long as Congress does not interpose to regulate the subject, the rights of material men furnishing necessaries to a vessel in her home port may be regulated in each State by State legislation. State laws, it is true, cannot exclude the contract for furnishing such necessaries from the domain of admiralty jurisdiction, for it is a maritime contract, and they cannot alter the limits of that jurisdiction; nor can they confer it upon the State Courts so as to enable them to proceed *in rem* for the enforcement of liens created by such State laws, for it is exclusively conferred upon the District Courts of the United States. They can only authorize the enforcement thereof by common law remedies, or such remedies as are equivalent thereto. But the District Courts of the United States, having jurisdiction of the contract as a maritime one, may enforce liens given for its security even when created by State laws."

Even in the dissenting opinion of Clifford, J., in the Lottawanna case, he says:

> "Argument to show that a contract to furnish repairs and supplies, whether to a domestic or foreign ship, is a maritime contract, is hardly necessary, as there is not a well-considered decision to the contrary in our language, and the twelfth Admiralty Rule, throughout all its mutations, from the time it was first adopted to the present time, has always given the District Courts jurisdiction over such contracts, either *in rem* or *in personam*. Both the enemies and the friends of the Admiralty have always concurred in that proposition."

The Appellate Division recognizes this principle by the prevailing opinion of Adams, Ch. J., saying:

> "No one, of course, doubts that the contract and lien for repairs to a vessel plying between New York and Liverpool, whether made in the home or a foreign port, would be maritime in their nature, and consequently clearly within admiralty jurisdiction. The same would doubtless be true of a vessel engaged in navigating a gulf or river which adjoined or emptied into the sea."

The facts now presented clearly bring this case within this rule. This boat navigated not only the Erie Canal, but also the Hudson River, which not only adjoins but empties into the sea, and, as the owner's affidavit shows (p. 7), they

> "Are public navigable waters connecting the Great Lakes of Erie, St. Clair, Huron, Michigan and Superior and their tributary waters with the Atlantic Ocean, and upon which canal and river commerce and navigation are conducted and carried on between ports and places in different States, and between the United States and foreign countries."

And of these latter facts the Court will also take judicial notice.

The proof also shows (p. 8), that

> "Said boat is also so employed in the Harbor and Bay of New York and the public navigable waters connecting the same, and said boat has been so employed between ports and places in the State of New York and between ports and places in different States."

That a contract for making repairs upon a boat is a maritime contract is now fully recognized by this Court by Admiralty Rule 12, adopted in May, 1872, as follows:

> "In all suits by material men for supplies or repairs, or other necessaries, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*."

The only difficulty ever experienced by the courts was in determining the relative bearing or effect arising where the repairs were made upon a ship or vessel in a foreign port; *i. e.*, a port other than the one where the owner resided, and where the repairs were made upon a ship or vessel in her home port. It being well settled that the general maritime law gave a lien for repairs made in a foreign port, but did not give a lien for repairs made in the home port. To obviate this difficulty the several States passed laws, generally similar to our statute, providing for a lien and the method of creating such a lien where repairs were made within the State upon a vessel owned in the State. Subsequently this Court in passing upon the validity, effect, and rank of such liens determined that as to repairs made in a foreign port the general maritime law gave the lien; but as to repairs made in the home port the lien must be given by the statute of the State. And where a lien was given by the statute of the State, then both classes of liens

stood upon the same footing, and were enforceable only in admiralty. In other words, in the one case the lien was given by the general maritime law, in the other by statute, but in both cases after the lien was obtained they were enforceable with like effect in one and the same forum only.

The recent and leading case establishing these propositions is the

J. E. Rumbell, 148 U. S. 1.

decided March 6th, 1893, where the Court sums up the conclusions arrived at by it, and which it deemed settled and established by the decisions of that court, as follows:

> "In the admiralty and maritime law of the United States, as declared and established by the decisions of this court, the following propositions are no longer doubtful:
>
> "First—For necessary repairs or supplies furnished to a vessel in a foreign port a lien is given by the general maritime law, following the civil law, and may be enforced in admiralty. The General Smith, 4 Wheat, 438, 443; The St. Jago de Cuba, 9 Wheat, 409, 417; The Virgin, 8 Pet. 538, 550; The Laura, 19 How. 22; The Grapeshot, 9 Wall, 129; The Lula, 10 Wall, 192; The Kalorama, Id. 204."
>
> Second—For repairs or supplies in the home port of the vessel no lien exists or can be enforced in admiralty, under the general law, independently of local statute. The General Smith and The St. Jago de Cuba, above cited; the Lottawanna, 21 Wall., 558; The Edith, 94 U. S., 518.
>
> Third—Whenever the statute of a State gives a lien, to be enforced by process *in rem* against the vessel, for repairs or supplies in her home port, this lien, being similar to the lien arising in a foreign port under the general law, is in the nature of a maritime lien, and therefore may be enforced in admiralty in the courts of the United States. The Planter, 7 Pet., 324; The St. Lawrence, 1 Black, 522; The Lottawanna, 21 Wall., 558, 579, 580; Rule 12 in admiralty, as amended in 1872, 13 Wall, XIV.
>
> Fourth—This lien, in the nature of a maritime lien, and to be enforced by process in the nature of admiralty process, is within the exclusive jurisdiction of the courts of the United States sitting in admiralty. The Moses Taylor, 4 Wall., 411; The Hine, Id., 555; The Belfast, 7 Wall., 624; The Lottawanna, 21 Wall., 558, 580; Johnson vs. Elevator Co., 119 U. S., 388, 397; 7 Sup. Ct. Rep., 254.
>
> "The fundamental reasons on which these propositions rest may be summed up thus: The admiralty and maritime jurisdiction is conferred on the courts of the United States by the Constitution, and cannot be enlarged or restricted by the Legislature of a State.

> No State legislation, therefore, can bring within the admiralty jurisdiction of the national courts a subject not maritime in its nature. But when a right, maritime in its nature, and to be enforced by process in the nature of admiralty process, has been given by the statute of a State, the admiralty courts of the United States have jurisdiction, and exclusive jurisdiction, to enforce that right according to their own rules of procedure. See, in addition to the cases above cited, The Orleans, 11 Pet., 175, 184; Ex-parte McNiel, 13 Wall., 236, 243; The Corsair, 145 U. S., 335, 347; 12 Sup. Ct. Rep., 949."

We would call the attention of the Court also to the very recent case of "The Glide," 167 U. S., 606.

In this latter case, decided May 24th, 1897, in which the Supreme Court reverses the Supreme Court of Massachusetts on the very proposition involved in the case at bar, and holding

> "The enforcement, *in rem* of the lien upon a vessel, created by the statutes of Massachusetts, for repairs and supplies in her home port, is exclusively within the admiralty jurisdiction of the Courts of the United States."

The Court sums up its conclusions as follows:

> "The maritime and admiralty jurisdiction conferred by the Constitution and Laws of the United States upon the District Courts of the United States is exclusive. A lien upon a ship for repairs or supplies, whether created by the general maritime law of the United States or by a local statute, is a *jus in re*, a right of property in the vessel, and a maritime lien to secure the performance of a maritime contract, and therefore may be enforced by admiralty process *in rem* in the District Courts of the United States. When the lien is created by the general maritime law, for repairs or supplies in a foreign port, no one doubts at the present day that under the decisions in 'The Mose Taylor,' 4 Wall., 411, and 'The Hine,' Id., 555, above cited, the admiralty jurisdiction *in rem* of the courts of the United States is exclusive of similar jurisdiction of the courts of the State. The contract and lien for repairs or supplies in a home port, under a local statute, are equally maritime and equally within the admiralty jurisdiction, and that jurisdiction is equally exclusive."

We can not see how the Supreme Court could have put itself on record in language stronger or clearer than this.

Counsel for defendant in error seeks to make a distinction because this boat is navigating the canal, and therefore a court of admiralty would not have jurisdiction. While this claim was at one time considered of force, whatever doubt existed was entirely removed by the

decision in the case of *ex parte* Boyer, 109 U. S., 629, where the Court held that a canal situated wholly within the State of Illinois was public water of the United States and within the legitimate scope of the admiralty jurisdiction, even though the canal is wholly artificial and is wholly within the body of the State and subject to its ownership and control.

The Appellate Division in its opinion, says, after stating the rule as laid down in *ex parte* Boyer 109 U. S., 629:

> "The rule, as thus declared, falls far short, we think, of sustaining the appellant's contention in the present case. For her boat was but an ordinary canal boat, propelled by horse-power, and was not 'employed in the business of commerce and navigation between ports and places in different states and territories of the United States, upon the lakes and navigable waters of the United States.'"

The facts as heretofore stated, show not only that this is not true, but also bring this case within this rule in *ex parte* Boyer.

III

The Appellate Division lays undue stress upon the character of the vessel and does not give due weight to the navigability of the water upon which the boat is employed.

The character of the water upon which the boat is employed is made the guiding principle to determine as to whether or not the subject of the action is within the admiralty jurisdiction of the Federal Courts.

The rule as established in *ex parte* Boyer, 109 U. S., page 632, is

> "Navigable water situated as this canal is, used for the purposes for which it is used, a highway for commerce between ports and places in different States, carried on by vessels such as those in question here, is public water of the United States, and within the legitimate scope of the admiralty jurisdiction conferred by the Constitution and statutes of the United States, even though the canal is wholly artificial, and is wholly within the body of the State, and subject to its ownership and control; and it makes no difference as to the jurisdiction of the District Court that one or the other of the vessels was at the time of the collision on a voyage from one place in the State of Illinois to another place in that State."

We would also call the attention of the Court to the case of *ex parte* Garnet, 141 U. S., p. l., where the Court says, after citing the case of *ex parte* Boyer and others:

> "In all these cases it was held that the admiralty and maritime jurisdiction granted to the Federal Government by the Constitution of the United States is not limited to tide waters, but extends to all public navigable lakes and rivers. In some of the cases it was held distinctly that this jurisdiction does not depend on the question of foreign or inter-state commerce, but also exists where the voyage or contract, if maritime in character, is made and to be performed wholly within a single State."

This latter case is cited in the case of the E. A. Shores, Jr., 73 Fed. Rep., 342, p. 347, where the Court says the Supreme Court holds in effect:

> "That the navigable waters of the United States are national highways and subject to the national jurisdiction; that navigation upon such waters is necessarily national in character, and all vessels engaged therein and all their rights and liabilities are subject to national legislation, without regard to the nature of the trade, whether from port to port in one State or between the ports of different States."

Admiralty jurisdiction is not divested because of any peculiarity in form, size, or means of propulsion; it matters not, it is said, whether they be propelled by steam, wind, or animal power; if they are vehicles of commerce they are, according to the more recent decisions, within the jurisdiction of the admiralty.

The Montello, 20 Wall., 430.
The Daniel Ball, 10 Id., 557.
The General Cass, 1 Brown's Ad., 334.

What are public navigable waters is well defined in the case of the Daniel Ball, *supra*, where the Court says:

> "Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are, or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States within the meaning of the Acts of Congress, in contradistinction from the navigable waters of the States, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water."

And in the case of Miller vs. Mayor, etc., 109 U. S., 385, p. 395, this definition is adopted in the following language:

> "By 'navigable waters of the United States' are meant such as are navigable in fact, and which by themselves or their connection with other waters form a continuous channel for commerce with foreign countries or among the States. East River is such a navigable water. It enters the harbor of New York and connects it with Long Island Sound."

The U. S. Courts have also held in relation to contracts to be performed wholly within a State that that fact does not exclude it from the admiralty jurisdiction of the courts of the United States. The admiralty jurisdiction, conferred by the Constitution upon these courts, extends to all contracts of a maritime character to be performed upon navigable waters.

> The Mary Washington, 1 Abb. U. S. 1, Fed. Cases No. 9229.
> The Belfast, 6 Wall., 624.
> The Leonard, 3 Ben., 263, Fed. Cases No. 8256.
> U. S. vs. Burlington & Henderson Co. Ferry Co., 21 Fed. Rep., 331, p. 336.

And this rule is followed although the boat was built to navigate the canal, and had no means of locomotion in herself.

> The E. M. McChesney, 8 Ben., 150, Fed Cases No. 4463.
> Affirmed 15 Blatch, 183, Fed. Cases No. 4464.
> The Wilmington, 48 Fed. Rep., 566.

In the latter case the Court says:

> "It is now, however, quite well settled that canal boats, lighters, etc., used in harbors as instruments of commerce are, in like manner as sea going vessels, subjects of admiralty jurisdiction, and that contracts with regard to their employment and repair are maritime contracts and matters of admiralty cognizance."

The United States District Court for North. Dist. of New York has held that the Erie Canal and connecting waters are public navigable waters of the United States over which the Admiralty Court has jurisdiction, and exercises jurisdiction over it.

> The Thomas Carroll, 23 Fed. Rep., 912.
> The Ella B., 24 Fed. Rep., 508.

It has also been so held in the Southern District of New York, where the question of jurisdiction over the Erie Canal was directly before the Court.

Maloney vs. City of Milwaukee, 1 Fed. Rep., 611.

Jurisdiction over the Albemarle and Chesapeake Canal was exercised in 1874.

The Olie, 2 Hughes, 12, Fed. Cases No. 10485.

and over the Welland Canal in 1873.

The Avon, Brown, Adm., 170, Fed. Cases No. 680.

and even as early as 1856.

Scott vs. The Young America, Newb. 101, Fed. Cases No. 12549.

It is well known that admiralty assumes jurisdiction not only over canal boats but also over a dredge and scows.

The Alabama, 22 Fed. Rep., 449.

A raft of timber.

Muntz vs Raft of Timber, 15 Fed. Rep., 555.

A steamer of less than five tons burden engaged in carrying freight and passengers upon navigable water.

The Pioneer, 21 Fed. Rep., 426.

A ferry-boat plying between two ports in the same State in a navigable river.

U. S. vs. B. & H. Ferry Co., 21 Fed. Rep., 331.

A dismantled steamboat being fitted for use as a wharfboat.

The Old Natchez, 9 Fed. Rep., 476.

A barge without sails or rudder, used for lightering.

Disbow vs. The Walsh Bros., 36 Fed. Rep , 607.

A bath-house built on boats and designed for transportation.

The Public Baths No. 13, 61 Fed. Rep., 692.

A contract for the repair of scows used in carrying ballast to or from vessels.

Endner vs. Greco, 3 Fed. Rep., 411.

In this case a libel was filed *in personam* to recover the cost of certain repairs upon four scows. Objection was taken to the jurisdiction, the claim being that the contract was not a maritime contract, and that the scows having neither steam power, nor sails, nor rudders, but moved by steam tugs only in port in carrying ballast, and not upon the high seas, they are not ships or vessels, and that if they are ships or vessels, the court had no jurisdiction of a suit *in personam* for repairs furnished to a domestic vessel. The Court, Choate, D.J., held it was a maritime contract and sustained the jurisdiction, and said that the scows were not unlike canal boats and barges, which are now treated as vessels, and, being instruments of commerce, a contract for their repair was a maritime contract because it has relation to trade and commerce, and

> "Some connection with a vessel employed in trade."

As Benedict says in his work on Admiralty, § 213:

> "It is not the form, the construction, the rig, the equipment, or the means of propulsion that establishes the jurisdiction, but the purpose and business of the craft as an instrument of naval transportation."

See also Benedict's Admiralty, §§ 221, 221A.

And by the Revised Statutes of the United States, Section 3:

> "The word vessel includes every description of water craft or other artificial contrivance used or capable of being used as a means of transportation on water,"

And by Section 542, Revised Statutes of the United States:

> "The District Courts of the Southern and Eastern Districts of New York shall have concurrent jurisdiction over the waters within the counties of New York, Kings, Queens and Suffolk, either of seizures made and of matters done in such waters,"

Clearly showing that the waters of the Harbar and Bay of New York are within the admiralty jurisdiction of the Federal Courts.

We think the Appellate Division fell into error in taking judicial notice of the fact

> "That such a boat as the one in question cannot and does not navigate the high seas,"

as the facts admitted in this case show the boat does navigate the high seas in and about the harbor of New York and the coasts of New Jersey; and it is well known that such boats run and carry cargoes from New York to ports and places in Connecticut, New Jersey, Delaware and to Philadelphia, and canal boats built for use upon the Erie Canal navigate Lake Erie and carry cargoes from Cleveland, in the State of Ohio, and Erie, in the State of Pennsylvania, over Lake Erie, the Erie Canal and Hudson River to points upon the seaboard.

IV.

The express limitation contained in the opinion of the Court in ex parte Boyer has no bearing on this case.

The Supreme Court was careful in its opinion in the Boyer case to limit the extent of it so as not to cover

> "Waters wholly within the body of the State and over which vessels cannot so pass as to carry on commerce between places within said State and places in another State or in a foreign country,"

But this express limitation does not apply here for the reason that it is not within the facts established in this case. The boat in question, as stated, did navigate not only the Erie Canal, but the Hudson River, the East River and the Harbor and Bay of New York, and these waters are not wholly within the body of the State, but navigation is carried on upon them between the States, and the Erie Canal and Hudson River are the highways of commerce between the great lakes and the seaboard, and an extensive commerce is carried on over this water not only between ports and places in different States, but between ports and places in the various States and foreign countries.

V.

The Decisions of the United States Supreme Court should be followed as to the scope and extent of the jurisdiction of the Federal Courts.

The Constitution of the United States, Art. III, Sec. 2, declares that,

> "The judicial power shall extend to all cases of admiralty and maritime jurisdiction."

By provisions of the Judiciary Act of 1789, the District Courts of the United States

> "Shall have, exclusively of the courts of the several States, original cognizance of all civil causes of admiralty and maritime jurisdiction."

And this provision is preserved in substantially the same language in U. S. Rev. Stat., §863, Sub. 8th.

The Supreme Court has explained at length, in repeated adjudications, the scope and extent of this jurisdiction as herein before set forth, and its later decisions, conveyed in no uncertain language, should be adopted and followed. It was a long, hard struggle in the Supreme Court to arrive at a final determination, satisfactory to all the members of that court, but it was finally reached, and whatever contradictions or inconsistencies there may have been in the earlier cases, and in some of the dicta contained in some of the opinions, they have been overruled and explained away, so that the final result is a consistent, uniform and well understood scheme of jurisdiction, satisfactory not only to the bench and bar, but to all citizens, as their rights and remedies are well defined and well understood. The courts, respectively, of the States and of the nation, no longer strive to reserve each to themselves jurisdiction other than such as the general scheme of our government designs should be administered by them, but each, graciously and gracefully yields to the other within their respective spheres. This comity now existing and well recognized is well expressed by Chief Justice Andrews as follows:

> "On a question of statutory construction of an Act of Congress which has been determined by the Supreme Court of the United States, subsequently arising in this court, we should feel bound to adopt and follow the construction of that tribunal on the principle of comity, although in a case where the ultimate jurisdiction is vested in this court. This principle is especially important to be observed in such a case, in view of the relation between the Federal and State courts, not exercising, in all cases, a co ordinate jurisdiction, but engaged in the administration of justice to a great extent between persons who are citizens both of a State and of the

United States. The decisions of the tribunals of a State as to the true construction of the statutes of its own sovereignty are followed by the Federal courts, and it would be most unseemly and produce great confusion if State courts should refuse to adopt the construction of the Supreme Court of the United States, of Federal statutes."

York vs. Conde, 147 N. Y., 486, p. 491.

VI.

Careful examination and comparison of the cases in the Supreme Court and in the New York Court of Appeals based thereon, with the recent decisions of the Supreme Court, will demonstrate that the construction contended for by the plaintiff in error is the only correct one, and that the conclusion reached by the Appellate Division is not now justified.

The extent of admiralty jurisdiction in the United States courts, and the construction to be given to that provision of the Constitution conferring this jurisdiction, and the statute of 1789 passed to carry it into effect, early engaged the attention of the Federal Courts and was one upon which widely different views were entertained, as upon all questions involving the determination of the respective powers of the Federal and State governments.

The result attained, the establishment of that jurisdiction as now recognized in its full breadth and meaning, was reached by slow degrees, after repeated argument at the bar, and earnest discussion between the members of the court in consultation. As was stated by the court in the Hine vs. Trevor, 4 Wall., 555:

> "The history of the adjudications of this court on this subject which it becomes necessary here to review, is a very interesting one, and shows with what slowness and hesitation the court arrived at the conviction of the full powers which the Constitution and acts of Congress have vested in the Federal judiciary. Yet as each position has been reached, it has been followed by a ready acquiescence on the part of the profession and of the public interested in the navigation of the interior waters of the country, which is strong evidence that the decisions rested on sound principles, and that the jurisdiction exercised was both beneficial and acceptable to the classes affected by it."

The situation of the thirteen original States along the Atlantic seaboard at first led to a recognition of the limit to that jurisdiction established by the decisions of the English courts as determined by the ebb and flow of the tide, and in this respect these decisions were rigidly adhered to.

It was a settled principle of English jurisprudence at the time of the adoption of our Constitution, that the admiralty jurisdiction was limited to cases arising upon the sea or waters within the ebb and flow of the tide, and in the first case in which it became the duty of the Supreme Court authoritatively to define the limits of admiralty jurisdiction so far as it depended upon locality, this principle was unanimously adopted. (The Thomas Jefferson, 10 Wheat, 428, decided by the Supreme Court in 1835.)

But in the case of Waring vs. Clarke, 5 How., 441, decided in 1847, the Supreme Court refused its assent to the English rule excluding jurisdiction if the locality was *infra corpus comitatus.*

Its interpretation, in the case of The Thomas Jefferson, of course excluded as well the Great Lakes, as all navigable streams beyond the influence of the ebb and flow of the tide. But the commerce carried on there was small compared with the magnitude it has since attained. Nevertheless, the increasing importance of its commerce was already sufficient to awaken solicitude for its prosperity and its exclusion from the admiralty jurisdiction was contemplated with regret.

This led to the passage of the Act of February 26th, 1845, entitled

> "An Act extending the jurisdiction of the District Courts to certain cases upon the lakes and navigable waters connecting the same."

The constitutionality of this Act was questioned. It was defended and its constitutionality declared at first, as being within the powers of Congress to regulate commerce among the several States; but the Supreme Court held the Act to be wholly indefensible on that ground, but it was adjudged valid

> "On the ground that the Lakes and navigable waters connecting them are within the scope of admiralty and maritime jurisdiction as known and understood in the United States when the Constitution was adopted,"

and the Court held

> "The Lakes and the waters connecting them are undoubtedly public waters; and we think are within the grant of admiralty and maritime jurisdiction in the Constitution of the United States."

And after quoting from the Judiciary Act of 1789 the Court says:

> "The jurisdiction is here made to depend upon the navigable character of the water, and not upon the ebb and flow of the tide. If the water was navigable, it was deemed to be public; and if public, was regarded as within the legitimate scope of the admiralty jurisdiction conferred by the Constitution."

And the Court was led to the conclusion that the rule restricting the admiralty jurisdiction to tide waters was inapplicable to this country and ought to be discarded. It accordingly overruled the case of the

"Thomas Jefferson."

Holding that it was founded in error and it was the duty of the Court not to perpetuate it.

The Genesee Chief, 12 How., 443.

The next case coming before the Supreme Court, involving jurisdiction, was the Magnolia, 20 How. 296, determined at the December term, 1857. Jurisdiction was denied upon the ground that the collision, for which the action was brought to recover damages, was within the body of the county and was above tide-water. The Court held, upon the authority of the case of Waring vs. Clarke, that it was no objection to the jurisdiction that the tort was committed within the body of the county. A distinction, however, was sought to be made as to the point decided in the case of the Genesee Chief, claiming that that decision was based upon the Act of 1845, and was to be confined to the Great Lakes and was not to be extended over waters and subjects not included within the Act; but the Court held that the judicial power was extended by the Constitution to all cases of admiralty and maritime jurisdiction, and that the Act of 1845 was simply a declaratory act.

We pass over for the present the cases of Allen vs. Newbury, 21 How., 244, and McGuire vs. Card, 21 How., 248, decided in December, 1858, which we will discuss later.

At the December term, 1866, two cases were presented involving this question of jurisdiction, The Moses Taylor, 4 Wall., 411, and The Hine vs. Trevor, 4 Wall., 555. The first arose in California and the second in Iowa. Both involved the question of the validity of State Statutes giving a lien against ships and vessels and providing for their inforcement *in rem* by proceedings in the State Court. The former related to a maritime contract, the latter to a collision. In both, the Court held that the State statute, in so far as it authorized actions *in rem* against vessels in admiralty and maritime causes, was invalid, and that jurisdiction in such causes was vested exclusively in the Federal Courts.

The next case is that of The Eagle, 8 Wall., 15, which was decided in 1868, which arose in the Eastern District of Michigan, and the libel was filed to recover damages sustained by collision. It was contended that as the collision took place in the Detroit River on the Canadian side, and as there was no law in force in Canada giving a lien, the United States District Court had no jurisdiction. The Court held a plea to the jurisdiction bad upon the authority of the Genesee Chief, and as objection was taken that the case was not brought within the requirements of the Act of 1845, the Court passed upon that statute, and held that, since the decision of the case of the Genesee Chief, the Court must regard District Courts as having conferred upon them a general jurisdiction in admiralty over all public navigable waters, whether influenced by the tide or not, by the ninth Section of the original Act of 1789, and the enabling Act of 1845 therefore, had become inoperative and ineffectual as a grant of jurisdiction, and the Court held it to be obsolete and of no effect, with the exception of the clause which gives to either party the right of trial by jury when requested, which was rather a mode of exercising jurisdiction than any substantial part of it. This conclusion, relative to the Act of 1845, arrived at by the Supreme Court, was accepted in the Revision of the Statutes of the United States made in 1874, and the Act was omitted from the Statutes, excepting the clause giving the right of trial by jury. (§ 566, U. S. Rev. Stat.)

The case of the Daniel Ball, 10 Wall., 557, was decided at the December term, 1870. It is important as defining "navigable waters"

as before stated, and also from the fact that the boat was employed in the business of commerce between places in the same State, but, nevertheless, was held subject to the laws of Congress.

At the same term, the case of Insurance Co. vs. Dunham, 11 Wall, 1, was decided. We would call attention particularly to this case in view of the claim made below by counsel, that in the case at bar the contract for repairs was made on land, and performed wholly and entirely on land, and, therefore, was not a maritime contract, as the Court discusses at length what are maritime contracts, and, after stating that jurisdiction had been sustained by that Court in cases of suits by ship carpenters and material men on contracts for repairs, materials and supplies, says that the contract

> "Whether maritime or not maritime, depended, not on the place where the contract was made, but on the subject matter of the contract. If that was maritime the contract was maritime."

We then come to the case of the Lottawanna, 21 Wall., 558, determined in the Supreme Court in 1874. The libel originally was filed for mariner's wages, and the contest was over a surplus in the registry of the Court. The main question determined was, whether the furnishing to a vessel on her credit at her home port, needful repairs and supplies, creates a maritime lien, and the Court settled the question in this country that material men furnishing supplies and repairs to a vessel in her home port do not thereby acquire any lien upon the vessel by the general maritime law as received in the United States. But the Court held that the several States could by statute create liens, and that liens so created by the laws of a State in favor of materi[illegible] men for furnishing repairs and supplies to a vessel in her home port are valid, though the contract to furnish the same was a maritime contract and can only be enforced by proceedings *in rem* in the United States Courts. The lien having been given by statute, those courts alone had the power to enforce it.

This case seemed to have settled all questions of jurisdiction in the United States Courts in admiralty. For a number of years, however, doubt existed as to the jurisdiction of admiralty over canals wholly within a State. In April, 1880, the question came squarely before the

District Court for the Southern District of New York, in the case of Maloney vs. the City of Milwaukee, 1 Fed. Rep. 611, and it was there held that the Court had jurisdiction *in rem* upon a libel filed to recover damages for collision between two canal boats, the collision having taken place upon the Erie Canal, about one hundred miles east of Rochester in the County of Monroe. The Court based its decision upon the cases in the Supreme Court before referred to.

The suggestion contained in the opinion that the question must doubtless soon receive full consideration and a final determination in the Supreme Court was realized, for it came before the Supreme Court in 1884, in the *ex parte* Boyer, 109 U. S., 629, heretofore discussed.

We would also call attention to the mutations in the Twelfth Admiralty Rule of the Supreme Court. The history of this rule is important in considering the cases on jurisdiction determined not only in the Supreme Court, but particularly in the cases in the Court of Appeals referred to, the opinions in which would indicate that the effect of these changes had not been fully comprehended. We can do no better than to call attention to the opinion of Mr. Justice Gray in the case of The Glide *supra*, where the changes in this rule and the effect of such changes are fully discussed, and in which he states that

> "The question of the extent of the admiralty jurisdiction of the courts of the United States over cases like that now before the Court became at one time entangled in the question of the effect of the regulations of pleading and procedure in admiralty by this Court under the power conferred upon it by the Acts of Congress."

Which authorized the Court to promulgate rules of practice in cases of admiralty and maritime jurisdiction. As will be seen, the original rules adopted in 1844 to take effect September 1st, 1845, authorized proceedings *in rem* in cases of domestic ships where a lien was given by the local law. This rule was changed at the December term, 1858, to take effect May 1st, 1859, giving a proceeding *in personam*, but not *in rem* in cases of domestic ships. The rule was changed on May 6th, 1872, to the form in which it now stands as above quoted, and it was under the rule in this form that the case of The Lottawanna was decided.

Counsel for defendant and the Appellate Division lay great stress

upon the case of Allen vs. Newbury, 21 How., 244, and McGuire vs. Card, 21 How., 248. Both of these cases were decided in the December term, 1858. The Allen case arose on an appeal from the District Court of Wisconsin. A libel was filed in admiralty to recover damages to goods for loss on contract of affreightment. The Court based its decision solely upon the ground that the Act of 1845 did not give jurisdiction, as it did not apply to commerce between ports of the same State, and it was contended that if jurisdiction was not vested by this Act that the Court would not have jurisdiction of the case, and it sought to justify the Act as one to regulate commerce.

This view of the Act, however, as has been stated, was expressly repudiated by the Supreme Court in the case of The Eagle, decided in 1869.

The McGuire case was based upon the decision of the Court in the Allen case, and the Court calls attention to the fact that they had amended the Twelfth Rule so as to exclude the right of proceeding *in rem* in admiralty upon the lien acquired by State statute. Both of these cases, however, are expressly overruled by the Supreme Court in the case of The Belfast *supra*, decided in 1868. and in the case of The Lottawanna, Clifford, J., in his opinion criticises them and states that

"They were both distinctly overruled."

These two cases, therefore, have no weight or authority whatever and should not be considered as in any way affecting the question in the case at bar.

Counsel for defendant cites the case of The Ann Arbor, Fed. Cases No. 407, affd. No. 408. That case was determined in 1854 and was an interpretation of the law as then understood. That it is not good authority now and the reason why it is not, clearly appears from the note following the report in Federal cases to which I would respectfully refer the Court without further comment.

We come now to the consideration of the cases of the New York Court of Appeals relied upon by the defendant and cited in its opinion by the Appellate Division. The case of Shepard vs. Steele, 43 N. Y., 52, was decided in October, 1870. The action was upon a bond given to discharge a vessel attached in proceedings under the statute to en-

force a lien. The lien claimed arose for blacksmith work done in *building* the boat. The court in its opinion clearly recognizes the distinction existing between contracts for building a boat, which are not maritime and not enforceable in admiralty, and, therefore, may be enforced under the statute in a State court, and contracts for making repairs and furnishing materials to a boat in commission, which are maritime and must be enforced in admiralty; and it was held, that not being a maritime contract the bond could be enforced and the plaintiff was entitled to recover.

We would again call the attention of the court to the fact conceded in this case, that the contract in suit was for making repairs to, and not for building, a boat.

The case of Brookman vs. Hamill, 43 N. Y., 554 was decided May, 1871. This action also was upon a bond given to discharge a vessel from attachment. The claim for which a lien was filed was for wharfage. The court held that a wharfage demand was a maritime contract enforceable in admiralty and the State court therefore had no jurisdiction by attachment under the statute, and the court says, page 563:

> "All State statutes which attempt to confer upon State courts a remedy for marine torts or marine contracts by proceedings strictly *in rem*, are void. The exclusive character of the jurisdiction of the courts of admiralty, when it exists, cannot be affected by the question of lien or the form of remedy."

The court cites and comments upon the cases of McGuire vs. Card and Allen vs. Newbury, although it admits that the doctrine of these cases has been denied in the case of the Belfast. It also comments upon the Twelfth Rule in Admiralty as it then existed (May, 1871), which did not then permit a libel *in rem* in cases of domestic ships for supplies, repairs, or other necessaries, and says:

> "In view of the doctrine of the case of The St. Lawrence, I can see no want of power in the Supreme Court, should it see fit to do so, to restore the rule of 1844, or to allow a remedy *in rem* to material men in all cases."

This the Supreme Court has done as above stated.

The case of Happy vs. Moser, 48 N. Y., 313, was also an action upon a bond given to discharge a vessel seized under a warrant to enforce a lien claimed for certain lumber furnished and used in the build-

ing or construction of a barge. The court does not discuss the question as to jurisdiction to enforce the lien in the State court, but reversed the case because a note had been given for the debt, which operated to extend the time of payment, and the proceedings having been commenced before the note was due, they were prematurely brought, and also because improper evidence had been admitted.

In Delaney vs. Brett, 51 N. Y., 78, decided in September, 1872, the action was upon a bond given to discharge a vessel seized under a warrant to enforce a lien claimed for two sails furnished a seagoing vessel, whether in the building or after she was in commission does not appear. The court does not consider the question as to jurisdiction to enforce the lien in the State court. The case of Mott vs. Lansing, 57 N. Y., 112, was similar to the last case and the question of jurisdiction was not raised.

In the case of Poole vs. Kermit, 59 N. Y., 554, the court held the lien could not be enforced, inasmuch as it was claimed for work and materials furnished to a seagoing vessel, and was a maritime contract.

The case of King vs. Greenway, 71 N. Y., 413, decided December, 1877, was upon a bond given to obtain the release of a canal boat from attachment. A lien was claimed for machinery put into the boat, and the court held that the persons furnishing the machinery were builders, within the meaning of the Act giving a lien, and based its decision upon the authorities holding that a building contract is not maritime.

So also in the case of Wilson vs. Lawrence, 82 N. Y., 499, decided in November, 1880, the action was upon a bond, a lien being claimed for furnishing sails in the construction of a schooner. Here the Court held the contract to be for building, and not maritime.

The case of Fralick vs. Betts, 13 Hun, 632, was decided in 1878, and should be given no force or weight as an authority, as what was stated by the Court in that case in *obiter* and based upon McGuire vs. Card and Allen vs. Newbury, both of which have been overruled by the Supreme Court, as above stated.

The Appellate Division seems to have overlooked a case in the Supreme Court of New York clearly sustaining our views. It is the case of Ryan vs. Hook, 34 Hun, 185 (General Term, Fourth Department), decided in 1884, in which the opinion is by Judge Vann, now

of the Court of Appeals, in which jurisdiction in admiralty was sustained over a canal boat, a quarter deck scow without masts or steam power, used and employed upon the Erie Canal and Hudson River. The Court says (p. 187):

> "After some conflict among the the earlier decisions of the Federal courts, it seems now to be settled that the admiralty and maritime jurisdiction of the District courts extends not only to waters where the tide ebbs and flows, but also to all navigable waters of the United States, even including a river lying wholly within the boundaries of a State, when by its connection with other waters it forms a continuous highway over which commerce may be carried on with other States or foreign countries."

(Citing cases hereinbefore discussed.)

> "While the jurisdiction of the District courts over the waters traversed by the 'William Roberts' cannot well be disputed, a question is raised as to the jurisdiction of those courts over a canal boat."

After a discussion of the various cases bearing upon this question, the Court concludes (p. 188):

> "The weight of authority seems to be that where the services were maritime in nature, and were performed for the benefit of a canal boat without means of propulsion on board, but while it was engaged in navigating by means of towage, the navigable waters of the United States, the Admiralty Court has jurisdiction." See also,
>
> Murphy vs. Salem, 1 Hun, 140.
>
> Chisholm vs. North Trans. Co., 61 Barb. 363, p. 388 *et seq.*

The decisions of the Court of Appeals however, if they are in any way construed as applicable in the case at bar, are all prior in point of time to the decisions of the Supreme Court in the case of the Lottawanna, *ex parte* Boyer, The J. E. Rumbell, *ex parte* Garnette, and The Glide, and should have no binding force, but effect should be given to the decisions of the Supreme Court in these cases, and its construction of the Constitution and Statutes of the United States as to the jurisdiction of the Federal Courts in cases of admiralty and maritime jurisdiction should be adopted and followed. The Supreme Court has recently in an interesting and important case removed to it by writ of certiorari issued to the Circuit Court of Appeals for the

Second Circuit, and twice argued in the Supreme Court, held that it is settled

> "That the local decisions of one or more States cannot, as a matter of authority, abrogate the maritime law."

Workman vs. The Mayor, etc., 179 U. S., 552, p. 563. And the Court cites and quotes with approval both from the case of The Lottawanna and from The J. E. Rumbell.

See also Benedict's Admiralty, §§ 313, 313 A, 313 B.

VII.

Consideration of this jurisdictional question has often been embarassed and confused by failure to discriminate between a maritime *contract* and a maritime *lien*, and defendants counsel has fallen into this error. It is well settled, by numerous decisions, that jurisdiction in admiralty as to contracts depends upon the nature and subject-matter of the contract; that is, having reference to maritime service or maritime transactions.

> "A sure guide is to be found in the relation which the cause of action has to a ship, the great agent of maritime enterprise, and to public navigable waters as a highway of commerce. Where there is navigable water, and ships and vessels, these are the subjects of the maritime law. If a case relate to a ship, or to commerce on navigable waters, then it is subject to maritime law, and is a case of admiralty and maritime jurisdiction."

Having then a maritime contract, a party is entitled to proceed in admiralty to enforce it. He may proceed in one of two ways. He is always entitled to proceed *in personam*. He may also proceed *in rem* if he has a lien. For example, a contract to repair a boat is a maritime contract, and an action may be brought in admiralty *in personam* to recover for the repairs, but the person making repairs has not always a lien which he can enforce *in rem*. If the repairs are made upon a boat in a foreign port, the general admiralty law gives a lien, but if made in her home port there is no lien unless given by local statute. But having a lien, however given, one may proceed *in rem*

to enforce it. This is the remedy afforded for the enforcement of liens of that character. A maritime lien, unlike a lien at common law, may, in many cases, exist without possession of the thing upon which it is asserted, either actual or constructive. It confers, however, upon its holder such a right in the thing that he may subject it to condemnation and sale to satisfy his claim or damages; the only object of the proceeding *in rem* is to make this right, where it exists, available, to carry it into effect. It subserves no other purpose.

The lien and the proceedings *in rem* are, therefore, correlative; where one exists, the other can be taken and not otherwise. This right of action *in personam* in admiralty, although a libel *in rem* might not be maintained, is clearly pointed out by the Supreme Court in the recent case of Workman vs. The Mayor, etc., 179 U. S., 553, at page 573, where it was held that the City of New York was liable *in personam* for damages occasioned by its fire tug in collision. Therefore, in an examination of the cases, this distinction must be kept in mind. Frequently a liable *in rem* is filed, and the question of jurisdiction being raised, the Court will hold that the libelant never had a lien, or has lost it, and will dismiss the libel, where if a libel *in personam* had been filed, the contract being a maritime contract, the jurisdiction would have been sustained.

Counsel criticises the citation of cases where the cause of action was for damages for collision as having no bearing, and says the principle adopted in *ex parte* Boyer does not apply, because it was a collision case, and claims a different rule applies than in the case at bar upon contract. He does not show any distinction. There is none so far as the question here is concerned. It is true that the jurisdiction of the admiralty over maritime torts depends upon locality, i. e., the tort must have been committed upon public navigable waters. But as to the water, the same test has always been applied to contracts as to torts, and an examination of any or all of the cases on this subject will show that no distinction between the two kinds of cases has ever been made by any of the courts other than as above stated, that locality governed in tort and subject matter in contract. Having a maritime tort, or a contract relating to maritime affairs, upon public navigable waters, admiralty would have jurisdiction. Reference to the opinion

of the Supreme Court in Insurance Co. vs. Dunham, 11 Wall., 1, where the results arrived at by the Court are stated, will show that no distinction is made between the two classes of cases. There the Court says:

> "As to the *locus* or territory of maritime jurisdiction — that is, the place or territory where the law maritime prevails, where torts must be committed, and where business must be transacted, in order to be maritime in their character — a long train of decisions has settled that it extends not only to the main sea, but to all the navigable waters of the United States, or bordering on the same, whether landlocked or open, salt or fresh, tide or no tide."

Examination of the cases cited and quoted above will show that the difficulty encountered by the Supreme Court has always been, in both classes of cases, in determining what are public navigable waters of the United States. If the injury was committed, or the contract related to an instrument of commerce, upon water determined to be public navigable water, then admiralty had jurisdiction of the subject of the action in all cases in proceedings *in personam*, and in all cases *in rem*, if there was a lien.

Counsel in his brief says:

> "In the case of repairs where the common law gave a lien, there is no question but that State courts are authorized to enforce that lien by applying a remedy provided by a State legislature."

The only lien known to the common law was a possessory lien. A person making repairs upon a boat, or a watch, or a wagon, or other article of personal property, has a lien upon it for the value or amount of materials and labor put into the repairs, so long as he retains possession, until his claim is paid; but the moment the article passes from his possession his lien is gone, and his only remedy then is an action at law for the price. So, on a contract of affreightment by water, the carrier has a lien on the cargo for his freight, but it is a possessory lien, and the moment he delivers the cargo into the possession of the consignee his lien is gone and with it his right to proceed *in rem*. It is a maritime contract enforceable in admiralty, and if possession is retained the possessory lien acquired may be enforced *in rem*, but if the lien is lost the libel must be *in personam*. The lien sought to be enforced here is not a common law lien. Possession had been parted

with, and the lien was acquired under the statute, and it is sought to enforce it *in rem* in the State court.

As was explained by the Court in the case of The Moses Taylor:

> "The action against the boat by name, authorized by the statute, is a proceeding in the nature and with the incidents of a suit in admiralty. The distinguishing and characteristic feature of such suit is that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is adjudged and sentenced accordingly."

And the statement of the Court in that case applies equally here:

> "The case before us is not within the saving clause of the 9th Section. That clause only saves to suitors, 'the right of a common law remedy, where the common law is competent to give it.' It is not a remedy in the common law courts which is saved, but a common law remedy. A proceeding *in rem*, as used in the admiralty courts, is not a remedy afforded by the common law; it is a proceeding under the civil law. When used in the common law courts, it is given by statute."

As appears by the specifications filed (p. 4) the credit was given to the boat and the proceedings were taken under the statute to perfect a lien. Having complied with the statute and obtained a lien, petitioner had two remedies. He could continue his proceedings under the statute and enforce his lien in admiralty, or he has his right of action at law, and could have waived his lien and brought an action at law in the State court against the owner.

His specifications show also (p. 4) that the owner of the boat was a resident of the State, so that no difficulty would have been encountered in obtaining service of the summons and complaint in the action.

But as stated, if the petitioner was reluctant to do this, lest he might not obtain satisfaction of his judgment, and preferred to rely upon his lien and the remedy given by the statute, he must enforce his lien in admiralty, pursuant to the statute as it is founded upon a maritime claim. This works no hardship in this case, nor in any other case.

The relief given in admiralty in the United States courts is as effectual, in fact more so, than it would be in the State court. For, as explained in the case of The Moses Taylor:

> "It is this dominion of the suit in admiralty over the vessel or thing itself, which gives to the title made under its decrees validity against all the world. By common law process, whether of mesne

> attachment or execution, property is reached only through a personal defendant, and then only to the extent of his title. Under a sale, therefore, upon a judgment in a common law proceeding the title acquired can never be better than that possessed by the personal defendant. It is his title and not the property itself, which is sold."

In other words, if there was a mortgage upon the boat, the lien acquired under the statute and enforced by proceedings in the State court culminating in a sale, would result only in conferring title subject to the lien of the mortgage, but if the lien is enforced in a court of admiralty it would take precedence over the mortgage. The mortgage would be cut off by the sale and the title acquired would be full and perfect and vest absolute title to the boat free and discharged of any and all liens. This result is clearly expressed and shown in the case of The J. E. Rumbell. Furthermore the expense of thus proceeding in admiralty is much less than the expense incurred under the statute. This is shown by the result in these proceedings where the expenses amounted to more than the boat sold for.

VIII.

It being conceded that the contract and lien for repairs to a vessel are maritime in their nature and consequently within admiralty jurisdiction, as is admitted by the Appellate Division, and it being stipulated as a fact that the boat in question is, and has been, employed in commerce and navigation between ports and places in the State of New York, and between ports and places in different States, over public navigable waters upon which interstate commerce and navigation are conducted and carried on, as is stipulated in this case, we confidently claim that the State Courts of New York are without jurisdiction in this proceeding; that the jurisdiction of such proceedings is vested exclusively in the District Courts of the United States in admiralty and the judgment of the State Court should be reversed with costs.

MARTIN CLARK,
Attorney for Plaintiff in error,
Buffalo, N. Y.

SUPREME COURT—APPELLATE DIVISION, FOURTH DEPARTMENT.

In the Matter of the Application of Cornelius L. Haines to Enforce a Lien against the canal boat Robt. W. Parsons.

CLARA PERRY,
Appellant.

ADV.

CORNELIUS L. HAINES,
Respondent.

Appeal by Clara Perry, the owner of the canal boat Robt. W. Parsons, from an order of the Supreme Court, made at the Erie Special Term and entered in the office of the clerk of the County of Niagara on the 28th day of December, 1899, denying her motion to vacate an attachment granted in the action and to set aside all proceedings thereupon.

MARTIN CLARK,
For the Appellant.

GEORGE F. THOMPSON,
For the Respondent.

ADAMS, Presiding Judge.

This is an appeal from an order of the Erie Special Term denying a motion made by the appellant, Clara Perry, the owner of the canal boat Robt. W. Parsons, to dismiss the proceedings herein upon the ground that the Supreme Court is without jurisdiction to entertain the same.

The undisputed facts of the case are that the Robt. W. Parsons is an ordinary canal boat, navigating the Erie canal and the Hudson river; that in May, 1899, the petitioner made certain repairs to that boat at his dry dock in the village of Middleport, situated on the Erie canal, in Niagara county, and furnished the necessary material and labor therefor; that such repairs, labor and materials amounted in value to the sum of one hundred and fifty-four dollars and forty cents, of which sum ninety dollars and ten cents have been paid, and that a

balance of sixty-four dollars and thirty cents remains due and unpaid, for which amount specifications of lien were filed under the General Lien Law of this State. (Laws of 1897, chap. 418, art. 2.)

By section 35 of the article referred to it is provided that

> "If a lien, created by virtue of this article is founded upon a a maritime contract, it can be enforced only by proceedings in the courts of the United States, and in any other case, in the courts of this State, in the manner provided by the code of civil procedure."

No criticism is made as to the regularity of the petitioner's proceedings, provided he is entitled to invoke the aid of a State court in enforcing his lien; but it is contended that the contract out of which his right to a lien arose is maritime in its nature, and that the proceeding is, therefore, one of which a State court cannot take cognizance, inasmuch as the District Courts of the United States are by the Constitution and laws given exclusive jurisdiction of proceedings *in rem* in maritime and admiralty cases. (U. S. Const. art. 3, paragraph 2; Act of Congress of Sept. 24, 1789, chap. 20, paragraph 9 [1 U. S. Stat. at large, 76]; U. S. R. S. paragraph 563, subd. 8; The Glide, 167 U. S. 606.)

The question which is thus presented for our consideration is one which has provoked much discussion, and one concerning which the State and Federal courts have apparently entertained and expressed somewhat diverse views; but we think this diversity is due to the difficulty which necessarily attends any attempt to draw a line which shall determine in each individual case just when a vessel so far ceases to navigate domestic or inland waters as to become subject to maritime jurisdiction.

No one, of course, doubts that the contract and lien for repairs to a vessel plying between New York and Liverpool, whether made in a home or a foreign port, would be maritime in their nature, and consequently clearly within admiralty jurisdiction. The same would doubtless be true of a vessel engaged in navigating a gulf or river which adjoined or emptied into the sea (Poole vs. Kermit, 59 N. Y. 554; The Glide, supra), but it has been repeatedly held that our State courts have jurisdiction in cases of repairs made and supplies furnished

of water wholly within the State, such, for instance, as the Erie canal. (Sheppard vs. Steele, 43 N. Y. 52; Brookman vs. Hamill, Id. 554; King vs. Greenway, 71 Id. 413; Fralick vs. Betts, 13 Hun, 632.)

The truth of this assertion will doubtless be conceded, but it is claimed that a comparatively recent decision of the Supreme Court of the United States has virtually overturned the doctrine of the cases cited, and is authority for the proposition that even so insignificant a craft as a canal boat, engaged in navigating an artificial waterway which is wholly within the borders of a State, is subject to admiralty jurisdiction, and consequently that a lien for repairs to the same cannot be enforced in a State court. (Ex parte Boyer, 109 U. S. 629.)

It is not to be denied that the principle enunciated in the case above cited, and which apparently constituted the appellant's main reliance in this case, does have a tendency to extend admiralty jurisdiction to a point somewhat in advance of any theretofore attained, but when the facts in that case are carefully examined it will be seen, we think, that they bear no analogy to those of the one we are now considering.

It seems that the controversy there arose out of a collision between two canal boats while they were navigating the Illinois and Michigan canal. Although this canal is wholly within the territorial bounds of the State of Illinois, it was constructed upon lands the use of which is vested in that State by the United States, upon the condition that it should forever remain a public highway for the use of the government. Moreover, its dimensions are such as to enable vessels to pass from the Mississippi river into Lake Michigan and thus carry an interstate commerce. The two canal boats in question were propelled by steam and were enrolled and licensed for the coasting trade and were actually employed in the business of commerce and navigation between different ports and places in different States and Territories of the United States, upon the lakes and navigable waters of the United States. A libel in admiralty was filed by the owner of one of the boats, but the Court found that both parties were in fault and adjudged that each should pay one-half of the damages occasioned by the collision. One of the owners thereupon presented a petition asking for a writ of prohibition to restrain further proceedings in the suit upon the ground of want of jurisdiction of the

District Court as a court of admiralty. But upon the foregoing facts the prayer of the petition was denied, the Supreme Court, by Mr. Justice Blatchford, saying that,

> "Navigable water *situated as this canal is*, used for the purposes for which it is used, *a highway for commerce between ports and places in different States, carried on by vessels such as those in question here*, is public water of the United States and within the legitimate scope of the admiralty jurisdiction conferred by the Constitution and Statutes of the United States, even though the canal is wholly artificial and is wholly within the body of a State and subject to its ownership and control,"

to which conclusion, however, the learned justice was careful to add:

> "This case does not raise the question whether the admiralty jurisdiction of the district court extends to waters wholly within the body of a State, and from which vessels cannot so pass as to carry on commerce between places in such State and places in another State or in a foreign country; *and no opinion is intended to be intimated as to jurisdiction in such a case.*"

The rule, as thus declared, falls far short, we think, of sustaining the appellant's contention in the present case. For her boat was but an ordinary canal boat, propelled by horse power, and was not

> "Employed in the business of commerce and navigation between ports and places in different States and Territories of the United States, upon the lakes and navigable waters of the United States."

On the contrary, its navigating ventures were confined to the Erie canal and the Hudson river. It is true that the latter stream finds its way to the Atlantic ocean, and that one of its banks is for a short distance within the territorial bounds of the State of New Jersey; but the Court will take judicial notice that such a boat as the one in question cannot and does not navigate the high seas. The purpose for which it was constructed and used was doubtless to engage in commerce between the City of New York and various points upon the Erie canal, in the western part of the State, and while, in order to carry out this business, it was necessary that it should be towed through the Hudson river, we do not think that for that reason, or for any other which the record discloses, it can be successfully asserted that its sole purpose and occupation was not that of navigating inland and domestic waters.

If the appellant's contention is well founded then the State courts are deprived of all jurisdiction to enforce a lien for repairs made to

any boat navigating the waters of the Erie canal, however insignificant they may be, because, forsooth, the canal connects with a stream which ultimately empties into the Atlantic ocean, and by following the course of which the boat might reach the same destination, although it had no occasion to do so and would be pretty certain to go to the bottom if so perilous a voyage were attempted. We do not believe that the case of Boyer (supra) is authority for any such startling doctrine, and we must refuse to give to it that force and effect until compelled so to do by a decision more directly in point than that appears to be.

In this connection it is perhaps proper to add that the more recent decisions of the same tribunal to which our attention has been directed (Matter of Garnett, 141 U. S. 1; The Glide, supra) simply reiterate the doctrine of the Boyer case and apply it to facts that are even less analogous to those of the case at bar. It follows that the order appealed from should be affirmed.

All concurred except Williams and Laughlin, J. J., dissenting.

Williams, J. (dissenting):

The proceeding was brought under Section 3419 *et seq.* of the Code of Civil Precedure to enforce a lien for repairs upon a canal boat. These sections provide for the proceedings to enforce liens upon vessels, created by virtue of article 2 of the Lien Law, *not based upon a maritime contract.* Article 2 of the Lien Law (Chap. 418, Laws of 1897) provides for liens upon vessels for debts not liens under the Maritime Law; and section 35 provides,

> "If a lien created by virtue of this article is founded upon a maritime contract, it can be enforced only by proceedings in the courts of the United States, and in any other case, in the courts of this State, in the manner provided by the code of civil procedure."

The appellant claims that the lien in question was founded upon a maritime contract and can, therefore, be enforced only by proceedings in the United States courts. There is no dispute but that the lien here was for labor and materials used in making repairs upon the canal boat, which was navigating the waters of the Erie canal and Hudson river.

The repairs were made in May, 1899; the lien was filed during the

same month, and the seizure under the warrant was made the latter part of November, 1899, at Albany, N. Y., while the boat was upon a trip from Buffalo to Brooklyn, N. Y., with a cargo of lumber shipped from Buffalo November 1, 1899, consigned to a firm in Brooklyn. The law is well settled, as stated in the case of The Glide (167 U. S. 606):

> "The inforcement, *in rem*, of the lien upon a vessel, created by the public statutes of Massachusetts, * * * for repairs and supplies in her home port, is exclusively within the admiralty jurisdiction of the courts of the United States."

The Court in that case, after an extended review of the cases, said:

> "In conclusion, the considerations by which this case must be governed may be summed up as follows:
>
> The maritime and admiralty jurisdiction conferred by the Constitution and laws of the United States, upon the District Courts of the United States is exclusive. A lien upon a ship for repairs or supplies, wheather created by the general maritime law of the United States or by a local statute, is a *jus in re*, a right of property in the vessel and a maritime lien, to secure the performance of a maritime contract, and, therefore, may be enforced by admiralty process *in rem* in the District Courts of the United States. When the lien is created by the general maritime law for repairs or supplies in a foreign port, no one doubts at the present day that, under the decisions in The Moses Taylor and The Hine (4 Wall. 411, 555), above cited, the admiralty jurisdiction *in rem* of the courts of the United States is exclusive of similar jurisdiction of the courts of the State. The contract and the lien for repairs or supplies in a home port, under a local statute, are equally maritime and equally within the admiralty jurisdiction, and that jurisdiction is equally exclusive,"

The only question here, therefore, is whether the canal boat in question, navigating the Erie canal and the Hudson river, is such a vessel as is covered by the law relating to maritime contracts.

The claim made by the respondent is that the admiralty jurisdiction of the United States courts is confined to such vessels as navigate the high seas, and does not extend to boats engaged only in commerce between different points in the same State.

In Ex parte Boyer (109 U. S. 629), decided in 1883, it was held that admiralty had jurisdiction of a suit *in rem* against a steam canal boat, to recover damages caused by a collision between her and another canal boat, while the two boats were navigating the Illinois and Lake

Michigan canal, four miles from its Chicago end, in Cook county, Ill., although the libellant's boat was bound from one place to another in the same State, Illinois.

The waters of the canal were held to be public waters of the United States, and within the legitimate scope of the admiralty jurisdiction, though the canal was an artificial one, and wholly within the State of Illinois.

In Matter of Garnett (141 U. S. 1) it was held that the laws of limited liability, as a part of the maritime law of the United States was in force upon navigable rivers above tide water, and applied to enrolled and licensed vessels exclusively engaged in commerce on such rivers. In that case the Katie was a steamer engaged in the carrying trade between Augusta and Savannah, both upon the Savannah river and in the State of Georgia.

The Court among other things said:

> "It being clear, then, that the law of limited liability of ship owners is a part of our maritime code, the extent of its territorial operation * * * cannot be doubtful. It is necessarily coextensive with that of the general admiralty and maritime jurisdiction, and that, by the settled law of this country, extends wherever public navigation extends—on the sea and the great inland lakes, and the navigable waters connecting therewith. (Citing many cases). It being established, therefore, that the law of limited liability is part of the maritime law of the United States, it only remains to determine whether that law may be applied to navigable rivers above tide water such as the Savannah river, and to vessels engaged in commerce on such a river like the steamboat Katie in this case. Of this there can be no doubt whatever. The question has been settled by a long course of decisions, some of which are here referred to. (Citing many cases). In all of these cases it was held that the admiralty and maritime jurisdiction granted to the Federal government by the Constitution of the United States is not limited to tide waters, but extends to all public navigable lakes and rivers. In some of the cases it was held distinctly that this jurisdiction does not depend on the question of foreign or interstate commerce, but also exists where the voyage or contract, if maritime in character, is made and to be performed wholly within a single State."

The Court quotes from the case of The Belfast (7 Wall. 624), as said by Mr. Justice Clifford,

> "Navigable rivers which empty into the sea, or into the bays and gulfs which form a part of the sea, are but arms of the sea, and are as much within the admiralty and maritime jurisdiction of the United States as the sea itself."

These are the latest expressions of the Supreme Court of the United States upon this subject to which our attention has been called, or that we have been able to find, and, if followed by this court, they are decisive of this appeal.

Our attention is called to several cases in the Court of Appeals in this State, but none of them were decided later than 1880, and so far as they are in conflict with the clearly expressed decisions of the higher court they should be regarded as overruled. The controlling consideration in this case, under the decisions hereinbefore referred to, is that the canal boat in question was a boat navigating not only the Erie canal, but the Hudson river. This river is a public navigable one, and empties into the sea in New York harbor. It is not entirely within the State of New York, but touches the State of New Jersey as well. Its waters cannot be said to be inland waters of the State of New York merely. Clearly, in view of this consideration, under the authorities referred to, the contract was maritime in its nature.

The courts of this State, therefore, had no jurisdiction of this proceeding, and the order appealed from should be reversed, with costs of the appeal to the appellant, and motion granted with ten dollars costs.

Laughlin, J., concurred.

Order affirmed with ten dollars costs and disbursements.

FILE COPY.

16

384

Supreme Court U. S.
FILED
MAR 7 1903
JAMES H. McKENNEY,
Clerk.

GEORGE F. THOMPSON,
Counsel for Defendant in Error,
Middleport, New York.

SUPREME COURT OF THE UNITED STATES.

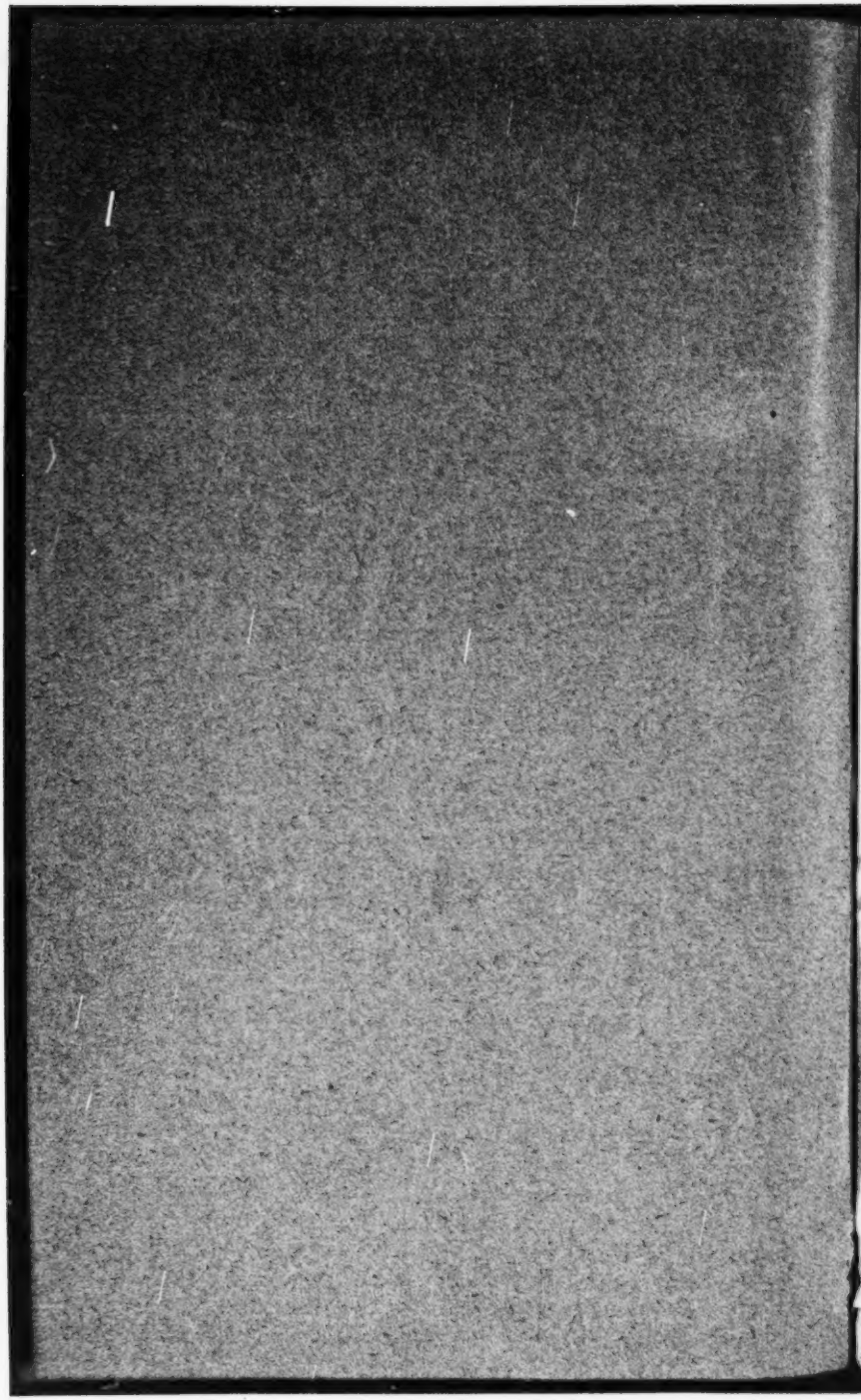
CLARA PERRY, OWNER OF THE CANAL BOAT "ROBERT W. PARSONS," PLAINTIFF IN ERROR,

vs.

CORNELIUS L. HAINES, DFFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

Brief for Defendant in Error.



I

This proceedings was commenced in the Supreme Court of the state of New York by petition pursuant to Chapter 23, Title 4 of the Code of Civil Procedure of the state of New York, and a warrant for the seizure of said canal boat, Robert W. Parsons, was issued therein pursuant to the authority of said Chapter 23, Title 4 of the Code of Civil Procedure, and by virtue of said warrant said canal boat Robert W. Parsons was seized herein. An application to vacate said attachment was thereafter made by Clara Perry, owner, on the ground that it was alleged by said owner that the proceedings authorized by said chapter 23, Title 4 of the Code of Civil Procedure were in violation of the constitution of the United States for the alleged reason that the contract for the furnishing of the repairs to the said canal boat Robert W. Parsons, mentioned in the petition herein, was a maritime contract in the enforcement of which United States Courts of Admiralty had exclusive jurisdiction. This motion was denied by Hon. Truman C. White, Justice of the Supreme Court, at special term on November 29, 1899, and from which order an appeal was taken by Clara Perry to the Appellate Division of the Supreme Court and affirmed.

In re Haines 52 App. Div. N. Y. 550.

The original proceeding was instituted before Hon. Henry A. Childs, Justice of the supreme court and after the denial of said application for attachment, was continued before him and an order for sale made by him and also a final order directing the distribution of the proceeds. Clara Perry, owner, appeared by Messrs Clinton & Clark and opposed the granting of said orders by Hon. Justice Childs on the ground that the state court had no jurisdiction. Their objections were overruled by said Justice and said orders granted.

From these orders appeal was taken to the appellate division of the supreme court and affirmed (57 App. Div. N. Y. 636 memo.) and from that order of affirmance, appeal was taken to the court of appeals of the state of New York and again affirmed. The facts before the courts were substantially the same on all hearings and appeals, the appellate division on second appeal holding that no new facts appeared that were not considered in the former appeal.

The judgment of the court of appeals was on July 11, 1901, remitted to the supreme court of the state of New York, according to New York practice, and on July 26th 1901, said judgment by order of the supreme court dated that day was made a judgment of the supreme court of the state of New York and was formally entered

as such a judgment on Oct. 24, 1901 at 1 o'clock p. m.,—to that judgment this writ of error is directed.

II

Title 4 of Chapter 23, of the Code of Civil Procedure of the state of New York was a re-enactment of a previous act of the Legislature (Chap. 482, Laws of 1862) of said state, for the enforcement of liens against ships and vessels This previous enactment of the Legislature has been construed by the courts of the state of New York and held unconstitutional so far as it provides a remedy for the enforcement of a *maritime contract*, but to be constitutional and effective so far as it relates to the enforcement of liens by virtue of ordinary domestics contracts for the furnishing of repairs and supplies to domestic craft, such as boats constructed and used on the inland canals of the state—It being held that these are not maritime contracts within the meaning of the constitution of the United States.

Shepard v. Steele, 43 N. Y. 52;
Mott v. Lansing, 53 N. Y. 554.
Poole v. Kermit, 59 N. Y. 555.
Nelson v. Lawrence, 82 N. Y. 409.
Brookman v. Hamil, 43 N. Y. 112.
Fralich v. Betts, 13 Hun. (N Y.) 632.
People's Ferry Co. v. Biers, 20 How. E. S. 393 to 402.
Allen v. Newbury, 21 How. U. S. 245.
Propellor Genesee Chief v. Fitzhugh, 12 How. U S. 443.
McGuire v. Card, 21 How. U. S. 248
Happy v. Mosher, 48 N. Y., 78.
Delaney v. Britt, 51 N. Y., 78.
In re Haines, ——————N. Y.

III

A stipulation was made (see Transcript of Record p. 11) by which in order to avoid a reference to take testimony, it was stipulated that the witnesses would swear to the *facts* stated in their affidavits and also admits other immaterial facts. Said Stipulation states that the facts (not the conclusions) were to be taken as true, consequently it has not been stipulated as stated in appellant's brief on prior argument that the lien is founded upon a maritime contract. This conclusion is for the court to decide, and has been decided by all the courts of the state of New York in the negative, and was not stipulated, nor intended to be stipulated.

The Parsons was built as an ordinary canal boat and was run for

eighteen years on the Erie Canal and Hudson River; has no propelling power, and can be propelled only by horse power while on the Erie canal and cannot be propelled in any other water except by being attached to some other boat.

The subject of the lien was for building permanent repairs on the boat, to-wit: The side of the boat and cheek plank were rebuilt into her. The repairs were performed, not while the boat was on the water, but while the boat was on the dry dock at Middleport N. Y., an inland town. Without these repairs the boat could not navigate.

When the repairs were made the boat had been navigating the Erie canal on its way to the City of Buffalo from the City of New York. When seized it was making a trip from the City of Buffalo to the city of Brooklyn. (See affidavits of Cornelius L. Haines and Levi Perry, pp. 9 and 10.)

The *Parsons* was built to navigate the Erie canal and had run on this canal eighteen years, and also on the Hudson river.

It is a well-known fact that all canal boats are towed through the Hudson River and around New York harbor to and from different docks, but the *Parsons* of itself was absolutely unable to navigate in other waters except the Erie canal, unless it should be attached to some other boat.

At the time when the repairs were made, the contract was made at Middleport, N. Y., and the boat had proceeded from New York City and was on its way to Buffalo, and at the time when seized was on its way from Buffalo to Brooklyn and was therefore wholly engaged in navigating between different points in the same state.

The fact that it was afterwards and at some other time towed to Jersey dock and loaded would not change its character so far as Haines' contract was concerned for at the time Haines' contract was made and at the time of seizure, appellant's boat "was but an ordinary canal boat propelled by horse power and was not employed in the business of commerce and navigation between ports and places in different states and territories of the United States upon the lakes and navigable waters of the United States."

"Its navigating ventures were confined to the Erie canal and Hudson river." "Such a boat as the one in question cannot and does not navigate the high seas. The purpose for which it was constructed and used was to engage in commerce between the city of New York and various points upon the Erie canal in the western

part of the state." "In order to carry out this business it was necessary that it should be towed through the Hudson River" and also through the New York harbor, and "its sole purpose and occupation was" "that of navigating inland and domestic waters."

As aforesaid, the boat was at one time towed to Jersey City to load, but this was some time after the Haines contract was made, yet even assuming that it might have been on the very same trip when Haines made his contract with Perry the fact that the boat was taken over to Jersey City to load was but an incident in its trip and business of running between New York and Buffalo and could not effect the character of the boat.

(See prevailing opinion 52 App Div. N. Y. 550.)

In the practice in the state of New York, the Appellate Division of the Supreme Court settles the questions of fact Appeals beyond that apply the law to the facts as established by the court below subject to review by the Appellate division. The foregoing facts must, therefore, be considered as established before the court in the case at bar, as they are set forth in the opinion of the court.

IV

The Admiralty is a maritime court instituted for the purpose of administering the law of the sea. (The Lottawanna 21 Wal. 567) and the question as to the true limits of maritime law and admiralty jurisdiction is exclusively a judicial question and no state law or act of congress can make it broader or narrower than the judicial power may determine these limits to be, but what the law is within these limitations, assuming the maritime law to be the basis of the system depends on what has been received as law in the maritime usages of this country, and on such legislation as may have been competent to affect it. (The Lottawanna 21 Wall 558)

It is, of course, conceded that the United States Courts of Admiralty have exclusive jurisdiction of all maritime contracts, and the question of law to be submitted to this court, is, where the line should be drawn between an ordinary contract, of which the courts in general have jurisdiction, and a maritime contract of which, and concerning the remedy to enforce which, jurisdiction is confined exclusively to the United Stated District Courts.

It, therefore, remains necessary to determine what was meant by the framers of the Constitution when the term maritime contract was referred to and by what criterion we are to determine the precise limits of the law thus adopted. The Constitution does not define it nor does the Constitution attempt to draw the boundary between

maritime law and local law nor does it lay down any criterion for ascertaining that boundary.

Decisions of the courts are supposed to be founded upon common sense application of reasons for construction of a statute of the Constitution. In order to ascertain what was the scope of the Constitution, it was necessary to review the *reason* for the judicial decision upon the point involved. The reason advanced for making any contract a so called maritime one is that a vessel which travels between foreign ports if laid up in a foreign port must have credit in order to be able to return home in some instances. For that reason it is held that contracts in relation to such a vessel, its supplies and repairs, in a foreign port are maritime. By the maritime law, it is the last contract for supplies and repairs that has precedence over all others in relation to the vessel, and as has been said "the whole object of giving Admiralty process and priority of payment to privileged creditors is to furnish wings and legs to the vessel to get the vessel back for the benefit of all concerned, that is to complete her voyage." (J. E. Rumbell 148 U. S. 9.) This was for the purpose and reason of getting the vessel back within the jurisdiction of its home courts. For the same reason, it has always been held that a contract for supplies or repairs to any vessel whether sea-going or not in its home port was not a maritime one simply because there was no reason for it. The local courts had sufficient jurisdiction. Thereafter the state and local laws gave liens for supplies and repairs furnished in the home port of a vessel, and it has been held that after a local law had given such a lien, it became maritime for the reason that after a lien attaches and is continued a sea-going vessel would naturally sail to a foreign port and in that port the local laws could not be invoked, and an enforcement of the lien would require resort to an Admiralty Court. There are different reasons for applying such a doctrine. By subsequent decisions of this court, it has been held that for the purpose of ascertaining whether a contract is maritime that the different states of the Union might be considered as foreign to each other, and for that reason contracts in relation to vessels engaged in interstate commerce were regarded as maritime. This for the reason that a state could not enforce its lien beyond its own boundaries and it would be necessary that an Admiralty Court provide a remedy. Beyond this no decision of this or any other Admiralty Court has ever gone and beyond this no reason could be found or applied for resorting to Admiralty jurisdiction.

In fact, never before in any case before this Court has it been attempted to confine contracts relating to an absolutely impotent ves-

sel (ie. one propelled by horse power by means of a rope attached to a team of horses walking on the land) to the exclusive jurisdiction of the Admiralty Courts. In all previous cases before this Court there was involved sea-going ships or vessels plying between foreign countries or engaged in coasting trade between different states and territories, or steam boats enrolled and licensed and engaged in interstate commerce and able of themselves to travel between ports and places of different states.

The question has been discussed in its various phases by this court on several occasion.

The St. Lawrence, 1 Black 522;
The Commerce, 1 Black 578;
Peyroux v. Howard, 7 Peters, 324;
The Orleans, 11 Peters, 175;
The General Smith 4 Wheat. 438;
Waring v. Clark, 5 How. 452;
The Lexington, 6 How. 392;
The Genesee Chief, 12 How. 443, 454;
The Magnolia, 20 How. 298;
The Jefferson, 20 How. 393;
Allen v. Newburry, 21 How. 245;
McGuire v. Card, 21 How. 250;
The Capitol, 22 How. 129;
Hine v. Trevor, 4 Wall. 555;
The Belfast, 7 Wall. 637;
The Eagle, 8 Wall. 20.
The Grape Shot, 9 Wall. 129;
The Lulu, 10 Wal. 197;
The Kalorama, 10 Wall. 205;
The Custer, 10 Wall. 215;
Ins. Co. v. Dunham, 11 Wall. 21;
Ex parte McNeal, 13 Wall 243;
Edwards v. Elliott, 21 Wall. 532;
The Lottawanna, 21 Wall. 558;
Ex parte Boyer, 109 U. S. 629;
In re Garnet, 141 U. S. 8;
The J. E. Rumbull, 148 U. S. 1;
The Glide, 167 U. S. 606;
Workman v. Mayor, 179, U. S. 553;
Miller v. Mayor, 199 U. S. 385.

In the matter of The St. Lawrence (1 Black 522.) was a proceeding in rem to libel an ocean going steam vessel for supplies furnished

in its home port, and it was held in this case that in as much as the tide ebbed and flowed at the port where the supplies were furnished that it was therefore a maritime contract and could be enforced in admiralty.

Peyroux v. Howard (7 Peters 324), The General Smith (4 Wheat 438) and The Orleans (11 Peters 175) are all cases involving practically the same question, viz—that a contract for furnishing supplies in a home port of a vessel could be enforced in admiralty on the ground that the tide ebbed and flowed there, and in the case of The Orleans the libel was dismissed for the reason that it was not shown that the tide did ebb and flow. All these vessels which were the subject of the last three mentioned cases were also ocean going steam vessels.

The Commerce (1 Black .578) involved a steam propellor which was navigating on the Hudson River and along the coast on a voyage from Albany to Philadelphia, Pa, therefore an ocean going vessel. The libel was for a tort, and this case established a somewhat different rule for the recognizance of Admiralty jurisdiction in cases of tort as distinguished from cases of contract. That in case of a tort, it does not depend upon the regulations of commerce, but entirely on locality, and to base the decision on the ground that if a *wrongful act* is done on navigable water, the case is properly cognizant in admiralty court. In this case admiralty ~~jurisdiction~~ was given jurisdiction on the ground that a maritime tort was subject to admiralty jurisdiction even though there was no state law giving any lien.

The decision in Waring v. Clark (5 How. 452) was to the same effect, and the same principal was involved in the Boyer case (109 U. S. 629) In Waring v. Clark, however, the court followed decisions on the St. Lawrence and the Commerce, and held that the admiralty had jurisdiction on rivers if the tide ebbed and flowed and distinguishes a tort as depending on a different rule than that of a contract.

The Genesee Chief (12 How. 454) and The Eagle (8 Wall 20) were cases involving steam vessels navigating the Great Lakes It was held in these cases that admiralty had jurisdiction over a marine tort committed on the Great Lakes; both cases involved steam vessels engaged wholly in interstate commerce and in the case of The Eagle, the tort having been committed in Canadian waters.

In the case of the Magnolia (20 How. 298) was where a vessel navigating between ports of two different states on a river, through a harbor and along the Gulf of Mexico to another harbor in another

state, and it was held that admiralty had jurisdiction of a tort committed on this voyage by this boat on the Alabama River This decision is perfectly consistent with that in The Commerce, St. Lawrence and other cases above cited. This case also involved an ocean going steam boat engaged in interstate commerce.

The Jefferson (20 How. 393) was a case where a lien for materials furnished to an ocean going vessel by the builder was attempted to be enforced in Admiralty court, and it was held that such a lien was not a maritime lien and could not be enforced in admiralty. To the same effect was the decision in the Capitol (22 How. 129.)

Hine v. Trevor (4 Wall 555) follows the principal in the matter of the St. Lawrence above cited, and held admiralty had jurisdiction for repairs and supplies furnished a sea going steam vessel in its home port where the tide ebbed and flowed.

The Lexington (6 How. 392) and the Belfast (7 Wall. 637) were cases where the jurisdiction of the Admiralty Court was invoked on an affreightment contract; both cases involved ocean going steam boats engaged in interstate and foreign navigation, enrolled and licensed, and it was held that in as much as the contract was ~~done~~ made in reference to tide waters that admiralty had jurisdiction.

In Allen v. Newbury (21 How. 245) and McGuire v. Card (21 How. 250) were both cases where jurisdiction in admiralty was refused, and in both cases it was sought to enforce in admiralty liens for supplies and repairs pursuant to state laws giving such liens against vessels employed on the Great Lakes. The vessels involved in these cases were also steam boats, and had been engaged in interstate traffic. In the Allen v. Newbury case, it was stated in the opinion that "Admiralty jurisdiction should be confined to the high seas only and should not be extended to vessels which only navigate between points of different states within the United States". In the McGuire v. Card case it was held that a lien given by the state laws should be enforced in the state courts even though the state in which the vessel navigates be situated on the sea coast. In both of these cases Admiralty jurisdiction was refused by this court.

The Grape Shot (9 Wall. 129), the Lulu (10 Wall. 197), the Kalorama (10 Wall 205) and the Custer (10 Wall. 215) were all vessels engaged in foreigh commerce with foreign countries and were ocean going and in this case the jurisdiction of the Court of Admiralty was invoked to enforce a bottomry bond. The decision was on the ground that necessity for the use of a bottomry bond must be shown before it can be enforced, and these decisions have no particular application to the case at bar.

Insurance Company v. Dunham (11 Wall. 21) and Edwards v. Elliott (21 Wall 552) are also cases, the decisions in which have no particular application to the case at bar. The subject of the latter case was the enforcement of a contract for building a schooner. The subject of the Dunham case was the enforcement of a contract of marine insurance. Both cases were in reference to sea going steam vessels.

Ex parte McNeal (15 Wall. 236) was a proceeding in Admiralty to enforce a lien against an ocean going steamer for supplies furnished in its home port and the decision followed the decision in the St. Lawrence and other cases above cited.

In the Lottawanna (21 Wall 558), this court held, a contract for supplies furnished a vessel in its home port was not maritime and jurisdiction in Admiralty was refused, although the vessel which was the subject of the action was a steamer enrolled and licensed. The argument in this case cites Brookman v. Hamil 43 N. Y., 562, and the grounds upon which state jurisdiction is upheld in cases like the one at bar was very well set forth in the opinion by Judge Repello, of the New York Court of Appeals, in Brookman v. Hamil last cited.

Ex parte Boyer (109 U. S. 629) was a case of the collision of two vessels the one in question being an enrolled and licensed steamboat engaged in interstate traffic and licensed for the coasting trade. The object of this action was to enforce a libel for a maritime tort, and was decided on the same theory as the Commerce above cited.

In re Garnet (141 U. S. 8) was an action to recover by means of a libel in admiralty for damage occurring to a cargo by means of a fire which occurred on a trip of this boat from Augusta to Savannah and intermediate points of the states of South Carolina and Georgia. The vessel in question was enrolled and licensed to carry on the coasting trade and was a sea going steam vessel, and it was held in this action that Admiralty had jurisdiction, and followed the decisions in the Belfast and the Magnolia cases, and the decision was expressly put upon the ground that the boat was regularly enrolled and licensed and engaged in maritime commerce between different states, along the coast and upon the harbors and public navigable rivers connecting with the sea, and the character of the boat was conceded, and no state law was relied upon to create the lien.

In the J. E. Rumbell (148 U. S. 1) was a case where Admiralty was invoked by means of a proceeding in rem to enforce a lien against a vessel for repairs and supplies furnished in its home port. The vessel which was the subject of the action was a sea going

steam vessel and the repairs and supplies were furnished in the port where the tide ebbed and flowed, and it was held that admiralty had jurisdiction under the authority of the Planter. St. Lawrence and other cases above cited which decided the same identical principal.

The decision of this court in The Glide (167 U. S. 606) was to the same effect and the circumstances were practically the same, and the decision was reached by applying the same principals as in the Rumbell case. The vessel which was the subject of the action was a sea-going steam tug.

In Workman v. Mayor (179 U. S. 553), a maritime tort was the subject of the action. The boat was an ocean going steam-boat and was for a collision between that boat and another in the harbor of New York and occurred on waters where the tide ebbed and flowed. It was held that admiralty had jurisdiction of such a tort.

Miller v. Mayor (199 U. S. 385) the controversy was over an action brought by a tax payer to prevent the construction of the East River Bridge, and involved the construction of a statute of the U. S The decision does not seem to be in point with the case at bar except that the decision in this case was put upon the ground that the East River was a public navigable river over which Congress had power to regulate the matter of building bridges. It would not, of course, be seriously contended that Congress had power to regulate the building of bridges over the Erie canal.

Appellant also cited in his brief in the Court below the following as having some bearing on the question under discussion, viz:

The General Cass, 1 Brown Ad. 334;
The David Ball, 10 Wall. 557;
The Montello, 20 Wall. 430.

The latter three cases were, however, suits arising under a penal statute requiring certain boats to be enrolled and licensed, and in as much as all three were steamboats and engaged in interstate and foreign traffic, it was held that they were proper subjects of the license and enrollment laws. These cases could hardly be said to aid appellants contention here, because the boat in question in this case at bar was not enrolled nor licensed.

V

And now as to the question at issue here—an absolutely new question, nowhere touched or reached in any of the cases above cited—*Whether an ordinary Erie canal boat—with no power or means of propulsion of its own—propelled by horse power on and from the land by means of a rope tow line—the boat not enrolled or licensed, and*

by long usage and custom not deemed subject to the license or enrollment laws,—not able of itself to escape from the Erie Canal, or the jurisdiction of the courts of the state of New York,—all parties residents and subject to the laws and process of the courts of the state of New York—is within exclusive civil and maritime jurisdiction and intended by the framers of the Constitution to be considered in the same important class as an Ocean Liner and to be dignified by exclusive admiralty process as to any and all contracts in relation to it.

Although operating the inland canals of New York State for more than fifty years, they have never been considered of enough significance nor sufficiently within maritime and admiralty usages to be required to become enrolled and licensed and no actions such as the three last cited are found in the books in relation to boats such as these

If this boat is subject to exclusive jurisdiction of admiralty, then its tow line must be (the same so called reasons apply) and by extending the argument the horses or mules must also be included,—and behold the ordinary farm horse, chattel mortgaged. is hitched to a towline, driven on the tow-path to Albany, taken aboard the boat to New York, towed over to Jersey City, thence back to Albany, taken off and to a blacksmith shop and shod, and straigntway the contract is maritime and the courts of Admiralty have *exclusive* jurisdiction to enforce this contract for shoeing, after the blacksmith loses possession. by proceedings in rem against the horse, cutting off the chattel mortgage and why ? Because they navigate the Erie canal (a portage between Lake Erie at Buffalo and the Atlantic ocean at New York) and have been to New Jersey once.

This is not intended as levity but simply to show the utter absurdity of the contention in this case at bar if followed and continued.

It is contended that admiralty is constantly extending its jurisdiction and that it should go further. But has it not already gone about as far as any common sense reason can be found for its extension ?

It is contended that the Erie canal is navigable water connecting the Great Lakes with the sea, its navigability being such as to give admiralty jurisdiction over it (Ex parte Boyer 109 U. S. 629, being cited as precedent for such doctrine) and assuming this to be true for the purpose of argument—does it follow that everything that floats on it, no matter how insignificant, is subject to the same admiralty jurisdiction. In ex parte Boyer, 109 U. S. 629, the opinion expressly states it to be in relation to boats "such as these"

(steamboats enrolled and licensed for the coasting trade). The boat which is the subject of this action is not "such as these in question" in the Boyer case, and no case regarding a boat like the one in the case at bar has ever been before this court and decided to be subject to the exclusive jurisdiction of Admiralty Courts in the enforcement of contracts in relation to it.

The New York courts have never attempted to conflict with the United States courts as to jurisdiction in this regard, but all decisions on this subject are in complete accord with the decisions of this court on this subject.

VI

The courts of the state of New York have, therefore, established a rule for the guidance of its citizens respecting the jurisdiction of the state courts as to liens against its own domestic vessels. This rule is not in conflict with any of the cases decided by this court. The rule is well set forth in the decision entitled Brookman v. Hamil, 43 N. Y. 554. and in the opinion of that case Judge Repello says: "To test the validity of these attachment liens in their operation upon particular cases, two questions must be determined. First: Is the *claim* of the attaching creditor to enforce which the state undertakes to give a lien and attachment a *maritime claim* cognizable in the courts of Admiralty? Secondly: Is the remedy given by the state law one which the common law did not give? An answer to either of them in the negative leaves their jurisdiction unaffected". (Opinion page 557).

The decisions of this court heretofore filed are uniform in that a claim for supplies and repairs in a home port is not a maritime claim. The claim for repairs and supplies only becomes maritime when a boat is in a foreigh port where the owner is supposed not to be known and it becomes maritime for a reason, viz: To give the ship wings and legs with which to sail home for the benefit of all concerned (J. E. Rumbell 148 U. S. 9). Therefore the claim of the attaching creditor in the case at bar is not a maritime claim. The answer to the first question is in the negative. The common law in respect to chattels has always given liens, sometimes a possessory lien, to a mechanic who furnishes attachments to it or performs labor upon it or in any way repairs it Therefore the attaching creditor in this case a bar had a lien which the common law gave. The statute of the state of New York simply extended this lien so that an attaching creditor could part with possession long enough to enable the boat to earn sufficient to pay for its repairs. The an-

swer to the second question is in the negative. The jurisdiction of the courts therefore, according to the argument of Judge Repello, above referred to will remain unaffected,

The principal cases decided by the courts of the state of New York on this subject are the following:

Shepard v. Steele, 43 N. Y., 52;
Mott v. Lansing, 53 N. Y., 554;
Poole v Kermit, 59 N. Y., 555;
Wilson v. Lawrence, 82 N. Y., 409;
Brookman v. Hamil, 43 N. Y.. 554.

A review of these decisions will disclose the fact that none of them are or have been in conflict with the decisions of this court on this subject.

VII

Courts of Admiralty cannot and do not exercise jurisdiction in any form over what is termed as land contracts and give as a reason for this that these contracts are made on land and to be performed on land. Many of the decisions above cited reiterate this principal and it seems to be well settled and in this regard this court has been followed by the courts of the State of New York.

People's Ferry Co. vs. Bears, 20 How. U. S. 393 and 402;
Shepard v. Steele, 43 N. Y., 52;
Brookman v. Hamil, 43 N. Y., 558.

The facts in the case at bar show that a contract for repairs was made on land at Middleport (Haines' dry dock), and was performed wholly and entirely on land in Middleport, N. Y., an inland town. Is there any reason therefore for refusing admiralty jurisdiction in the above cited cases that does not exist in the case at bar?

VIII

In all cases heretofore before this court involving questions of admiralty jurisdiction, the subject of the action has never consisted of a craft like the one in the case at bar It is always a steamboat, licensed, enrolled and able of itself to carry on commerce beyond the confines of its own state.

It never has been, and surely cannot now, be contended that a craft such as the one in the case at bar, was of such interstate or international importance as to require all contracts in relation to it to be considered maritime the same as a sea going vessel.

Appellant in prior argument has treated the character of the boat and the circumstances of the contract as unimportant, and has

given great weight to the so-called navigability of the waters of the Erie canal, and has cited as a principal precedent the case of ex parte Boyer (supra) 109 U. S 629. In this case, however, the court at the end of the opinion limited the extent of the jurisdiction so as not to extend to "waters wholly within the body of a state and over which vessels cannot so pass as to carry on commerce between places within said state and places in another state or foreign country."

The Supreme Court Appellate Division of the state of New York in settling the facts in this case held that "such a boat as the one in question cannot and does not navigate the high seas," * * "its sole purpose and occupation was that of navigating inland and domestic waters". This boat therefore in the case at bar could not pass out of the Erie canal of itself. These boats do not navigate the lakes and cannot, and the only time they leave the Erie canal is when attached to some other boat and then towed or carried to or in such places only as are inland or within a protected harbor even in that event.

If everything that floated on navigable water was the subject of a maritime contract for that reason only, then all contracts in reference to anything that floats anywhere are maritime as all running water finally reaches the sea. A limit line, therefore, as to admiralty jurisdiction, is necessary to be drawn somewhere and there surely is no reason and no precedent for including within the limit of such jurisdiction contracts in relation to boats such as the one in the case at bar in their navigating ventures on waters such as the Erie canal.

IX

Perry, living at St. Johnsville, N.Y., an inland town, owner of the canal boat *Parsons*, a boat able to navigate the Erie canal only, and in itself absolutely unable to navigate anywhere else, while on a trip up the canal stopped at Middleport, N. Y., another inland town, and on Haines' dry dock made a contract with Haines to furnish labor and material to repair the boat and rebuild a part thereof. and Haines pursuant to the contract made permanent repairs on the boat while said boat was on his land and in his possession in Middleport.

That these facts should constitute a *maritime contract* seems to appellee to be an absolutely absurd contention. The law in this respect in the state of New York has been regarded as settled for many years, and the bar, bench and legislature of this state have ever since been acting in accordance with the law so settled in reference

to these proceedings regarding canal boats such as these.

The standing of chattel mortgage liens and ownership interests are perfectly understood and relied upon and in accordance with the rule so settled, and it should not be shaken in regard to ordinary chattels such as the subject of this action without good reason.

As the court well said in the prevailing opinion written in this action by the Supreme Court of the state of New York "If the appellant's contention is well founded then the state courts are deprived of all jurisdiction to enforce liens for repairs made any boat navigating the Erie canal however insigniticent they may be," so also would the state courts be deprived of all jurisdiction of an action at law against the owner of the boat to recover the amount of the liens, for if the contract is maritime, then, of course, Admiralty has exclusive jurisdiction. There has been no decision of any court any where upon a similar state of facts holding such to be the law, and appellee is confident that it never has been intended to treat the remedy for the enforcement of such claims within the exclusive jurisdiction of the courts of admiralty Such a decision would render the state laws of the State of New York of practically no force or effect, and by increasing the importance of such a boat would cause litigants and claimants needless expense and great inconvenience by resorting to courts of admiralty in all claims or contracts in reference thereto notwithstanding the amount involved (in the case at bar less than $100.00) and which under the law as now and for several years considered settled are disposed of in a convenient and inexpensive manner by the state courts.

Appellee is confident that neither the contract nor lien are maritime in their nature or within admiralty jurisdiction and the orders appealed from should be affirmed.

GEORGE F. THOMPSON,
Attorney for Defendant in Error,
Middleport, N. Y.

Supreme Court of the United States.

No. 16.—October Term, 1903.

Clara Perry, Plaintiff in Error, vs. Cornelius L. Haines. } In error to the Supreme Court of the State of New York.

[October 26, 1903.]

This was a writ of error to review a judgment of the Supreme Court of the State of New York sustaining the jurisdiction of that court to enforce a lien for repairs made by Haines to the canalboat Robert W. Parsons, which was engaged at the time in navigating the Erie Canal and Hudson River.

Defense, that the statute of the State of New York, giving a lien for such repairs and providing a remedy for enforcing the same *in rem*, is unconstitutional, so far as concerns the remedy, and an infringement upon the exclusive jurisdiction of the courts of the United States in admiralty and maritime causes.

A motion to vacate the attachment, issued upon the petition of Haines, upon the ground that the court had no jurisdiction, was denied, an appeal taken to the Appellate Division of the Supreme Court, where the case was argued, and the order of the court below affirmed by a majority of the justices. (*Matter of Haines*, 52 App. Div. 550.) From the final order of the court, subsequently entered, the owner, Clara Perry, again appealed to the Appellate Division, where the order was affirmed, (*In re Haines*, 57 App. Div. 636,) and again by the Court of Appeals. (*In re Haines*, 168 N. Y. 586.) Whereupon a writ of error was sued out from this court.

Mr. Justice Brown delivered the opinion of the Court.

This case raises the question of the construction and constitutionality of the statutes of the State of New York, giving a lien for repairs upon vessels, and providing for the enforcement of such lien by proceedings *in rem*. The statute conferring the lien, so far as it is material, is given in the margin.* It will be noticed that it expressly excludes liens founded upon *maritime contracts*.

---

* Laws of New York (1897), chap. 418.

"Sec. 30. A debt which is not a lien by the maritime law, and which amounts to fifty dollars or upwards, on a sea-going or ocean-bound vessel, or fifteen dollars or upwards on any other vessel, shall be a lien on such vessel, her tackle, apparel and furniture, and shall be preferred to all other liens thereon, except mariner's wages, if such debt is contracted by the master, owner, charterer, builder or con-

That a State may provide for liens in favor of materialmen for necessaries furnished to a vessel in her home port, or in a port of the State to which she belongs, though the contract to furnish the same is a maritime contract, and that such liens can be enforced by proceedings *in rem* in the District Courts of the United States, is so well settled by a series of cases in this court as to be no longer open to question. (*The General Smith*, 4 Wheat. 438; *The Planter*, (*Peyroux* v. *Howard*,) 7 Pet. 324; *The St. Lawrence*, 1 Black, 522.) The remedy thus administered by the admiralty court is exclusive. (*The Moses Taylor*, 4 Wall. 411; *The Hine* v. *Trevor*, 4 Wall. 555; *The Belfast*, 7 Wall. 624; *The Lottawanna*, 21 Wall. 559; *Johnson* v. *Chicago &c. Elevator Co.*, 119 U. S. 388, 397; *The J. E. Rumbell*, 148 U. S. 1, 12; *The Josephine*, 39 N. Y. 19; *Brookman* v. *Hamill*, 43 N. Y. 554; *Poole* v. *Kermit*, 59 N. Y. 554.) If there were any doubts regarding this question they were completely put to rest by the case of *The Glide*, (167 U. S. 606,) in which it was distinctly held, in an exhaustive opinion by Mr. Justice Gray, that the enforcement *in rem* of a lien upon a vessel for repairs and supplies furnished in her home port, was exclusively within the admiralty jurisdiction of the courts of the United States.

It is equally well established that for causes of action not cognizable in admiralty, either *in rem* or *in personam*, the States may not only grant liens, but may provide remedies for their enforcement. Contracts for the building of a ship are the most prominent examples of such as are not maritime in their character, and hence within this rule. (*The Jefferson*, 20 How. 393; *The Capitol*, 22 How. 129; *Edwards* v. *Elliott*, 21 Wall. 532; *Johnson* v. *Chicago &c. Elevator Co.*, 119 U. S. 388; *Sheppard* v. *Steele*, 43 N. Y. 52.)

It remains to consider whether the contract in this case, which was for repairs furnished to a canalboat in a port of the State to which she belonged, was a maritime contract. If it were, the position of the State courts was wrong. The denial of exclusive jurisdiction on the part of the admiralty court to enforce this lien must rest upon one of two propositions: either because the cause of action arose upon an artificial canal,

signee of such ship or vessel, or by the agent of either of them, within this State, for either of the following purposes:

"1. For work done or material or other articles furnished in this State for or towards the building, repairing, fitting, furnishing or equipping of such vessel."

(The other subdivisions are immaterial.)

"SEC. 35. If a lien, created by virtue of this article, *is founded upon a maritime contract*, it can be enforced only by proceedings in the courts of the United States, and in any other case, in the courts of this State, in the manner provided by the code of civil procedure."

or because a canalboat is not a ship or vessel contemplated by the maritime law, and within the jurisdiction of the admiralty court.

1. At an early day, and following English precedents, it was held by this court in *The Thomas Jefferson*, (10 Wheat. 428,) that the admiralty courts could not rightfully exercise jurisdiction "except in cases where the service was substantially performed, or to be performed, upon the sea, or upon waters within the ebb and flow of the tide." The opinion is a brief one by Mr. Justice Story, and contains little more than the announcement of the general principle, and with no attempt to distinguish the English cases. It lacks wholly any display of the abundant learning which ten years before had characterized his celebrated opinion in *De Lovio* v. *Boit*, (2 Gall. 398; *S. C.*, Fed. Cas., No. 3776.) The case was a strong one for the adoption of English precedents, as it concerned a voyage from a port in Kentucky up the Missouri River and back again to the same port. It was, however, flatly overruled in *The Genesee Chief*, (12 How. 443,) and the modern doctrine established, to which this court has consistently and invariably adhered, that not the ebb and flow of the tide, but the actual navigability of the waters is the test of jurisdiction. It is true that case arose upon the Great Lakes, but the rule was subsequently extended to cases arising upon the rivers above the tidal effect. (*Fretz* v. *Bull*, 12 How. 466; *The Magnolia*, 20 How. 296.) In *The Daniel Ball*, (10 Wall. 557,) it was held that Grand River, a navigable water wholly within the State of Michigan, being a stream capable of bearing for a distance of forty miles a steamer of 123 tons burthen, and forming by its junction with Lake Michigan a continuous highway for commerce, both with other States and with foreign countries, was a navigable water of the United States, and the rule was broadly announced that "those rivers must be regarded as public navigable rivers in law, which are navigable in fact," and that "they constitute navigable waters of the United States within the meaning of the acts of Congress, in contradistinction from the navigable waters of the States, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries, in the customary modes in which such commerce is conducted by water." The same principle was applied in *The Montello*, (20 Wall. 430,) to the Fox River in Wisconsin, although its navigability was interrupted by rapids and falls over which portages were required to be made, and to Chicago River in *Escanaba Co.* v. *Chicago*, (107 U. S. 678.) See also *Miller* v. *Mayer*, (109 U. S. 385;) *In re Garnett*, (141 U. S. 8.)

The only distinction between canals and other navigable waters is that they are rendered navigable by artificial means, and sometimes, though by no means always, are wholly within the limits of a particular State.

We fail to see, however, that this creates any distinction in principle. They are usually constructed to connect waters navigable by nature, and to avoid the portage of property from one navigable lake or river to another; or to improve or deepen a natural channel; and they are usually navigated by the same vessels which ply between the naturally navigable waters at either end of the canal. Examples of these are the St. Clair Ship Canal, connecting St. Clair River with the lake of the same name; the St. Mary's Canal, connecting the waters of Lake Superior with those of Lake Huron; the Illinois and Michigan Canal, connecting the waters of Lake Michigan with the Mississippi River; the Welland Canal, between Lake Ontario and Lake Erie; the Suez Canal, between the Mediterranean and the Red Sea; the Great North Holland Canal, connecting Amsterdam directly with the German Ocean; and the Erie Canal, connecting Lake Erie with the Hudson River. Indeed, most of the harbors upon the lakes and Atlantic coast are made accessible by canals wholly artificial, or by an artificial channel broadening and deepening their natural approaches. Can it be possible that a cause of action which would be maritime, if occurring upon those connected waters, would cease to be maritime if arising upon the connecting waters? Must a collision which would give rise to a suit in admiralty, if occurring upon Lake Ontario, or Lake Erie, be prosecuted at common law, if happening upon the Welland Canal? This question arose in this country in the case of *The Avon*, (1 Brown's Ad. 170; *S. C.*, Fed. Ca. 680,) in which Judge Emmons, in a carefully considered opinion, took jurisdiction of a collision upon that canal, although it was wholly within British territory. While this was with one exception, (*Scott* v. *Young America*, Newberry's Ad. 101,) the earliest case in this country, it was no novelty in England, since in *The Diana*, (Lush. 539,) Dr. Lushington assumed jurisdiction of a collision between two British vessels in the Great North Holland Canal, rejecting altogether the contention that the legislature did not intend to give the court jurisdiction over matters occurring in foreign territorial waters. This jurisdiction has since been declared in England to extend to collisions between foreign vessels in the Bosphorus, (*The Mali Ivo*, L. R. 2 Ad. & Ecc. 356;) and in the Scheldt, (*The Halley*, L. R. 2 Priv. Coun. 193.) See also *The Thomas Carroll*, (23 Fed. Rep. 912;) *The Oler*, (2 Hughes, 12; *S. C.*, Fed. Ca. 10485;) *The E. M. McChesney*, (8 Ben. 150;) *S. C.*, (15 Blatch. 183;) *The City of Milwaukee*, (1 Fed. Rep. 611;) *The General Cass*, (1 Brown's Ad. 334; *S. C.*, Fed. Ca. 5307.) The tidal test was long since abolished by statute in England. (24 Vict. chap. 10; Marsden on Collisions, 210.)

Finally, in *Ex parte Boyer*, (109 U. S. 629,) such jurisdiction was held by this court to extend to collisions between two canalboats occurring in the Illinois and Lake Michigan Canal, Mr. Justice Blatchford

observing that "navigable water situated as this canal is, used for the purposes for which it is used, a highway for commerce between ports and places in different States, carried on by vessels such as those in question here, is public water of the United States, and within the legitimate scope of the admiralty jurisdiction conferred by the Constitution and statutes of the United States., even though the canal is wholly within the body of a State and subject to its ownership and control." The case is the more noteworthy from the fact that the canal was but sixty feet wide and six feet deep. It has never been overruled or questioned, and must be treated as settling the jurisdiction of the admiralty court over the waters of any artificial canal which is the means of communication between ports and places in different States and Territories. It is not intended here to intimate that if the waters, though navigable, are wholly territorial and used only for local traffic, such, for instance, as the interior lakes of the State of New York, they are to be considered as navigable waters of the United States. (*The Montello*, 11 Wall. 411.) In the case under consideration, however, the Erie Canal, though wholly within the State of New York, is a great highway of commerce between ports in different States and foreign countries, and is navigated by vessels which also traverse the waters of Hudson River from the head of navigation to its mouth.

2. But the crucial question involved in this case is whether the exclusive admiralty and maritime jurisdiction of the Federal courts attaches to canal boats—in other words, whether they are ships or vessels within the meaning of the admiralty law. If it be once conceded, as for the reasons above given we think it must be, that navigable canals used as highways for interstate or foreign commerce are navigable waters of the United States, it would be an anomaly to hold that such jurisdiction did not attach to the only craft used in navigating such canals. It is true that, in the more modern constructions, these canals are made wide and deep enough for the largest vessels; but it so happens that the Erie Canal was built at an early day, and was adapted only for vessels of light draught and peculiar construction. The possibilities of the future were then scarcely foreseen, and even if they had been, the State was too poor to provide for anything beyond the immediate present. For those purposes the canal was amply sufficient, and for twenty years was the principal means of communication with the Northwest, and was not only the highway over which all the merchandise was carried between the Hudson River and the Great Lakes, but was largely used for the transportation of passengers in the great Western immigration which immediately followed its construction. As late as 1850 large and handsomely equipped passenger vessels were run every day at stated hours, and the canal continued to be, even after the building of the railways, a favorite method of communica-

tion with the Great Lakes. While these boats were vessels of light draught, and were drawn by animal power, they were from 150 to 300 tons capacity—larger than those out of which arose the maritime law of modern Europe, and much larger than those employed by Columbus and the earlier navigators in their discovery of the new world. It is said by a writer in the Quarterly Review (Ben. Ad. Practice, sec. 220,) that "the first discoverers of America committed themselves to the unknown ocean in barks, one not above fifteen tons; Frobisher, in two vessels of twenty or twenty-five tons; Sir Humphrey Gilbert, in one of ten tons only." The ships in which the Vikings of Scandinavia invaded England, and ravaged the coasts of western Europe, (specimens of which are still preserved at Christiania,) were open boats, not exceeding 100 feet in length and 16 in breadth, and propelled partly by oars and partly by a single sail. In fact, neither size, form, equipment nor means of propulsion are determinative factors upon the question of jurisdiction, which regards only the purpose for which the craft was constructed, and the business in which it is engaged.

The application of this criterion has ruled out the floating dry dock, the floating wharf, the ferry bridge hinged or chained to a wharf, the sailors' Bethel moored to a wharf, (*Cope* v. *Valette Dry Dock Co.*, 119 U. S. 625); and a gas float moored as a beacon (*The Whitton*, 1895, P. 301; *S. C.*, 1896, P. 42; *S. C.*, 1897, A. C. 337).

But it has been held in England to include a fishing coble, a boat of ten tons burthen, twenty-four feet in length, decked forward only, though accustomed to go only twenty miles to sea, and to remain out twelve hours at a time (*Ex parte Ferguson*, L. R. 6 Q. B. 280); a barge, (*The Malvina*, Lush. 493, affirmed on appeal, Brown & Lush. 57); though not a dumb barge, propelled by oars only (*Everard* v. *Kendall*, L. R. 5 C. P. 428); and in America to steamers of five tons burthen, engaged in carrying freight and passengers upon navigable waters (*The Pioneer* 21 Fed. Rep. 426; *The Ella B.*, 24 Fed. Rep. 508; *The Volunteer*, 1 Brown's Ad. 159, affirmed 15 Int. Rev. Rec. 59); a barge, without sails or rudder, used for transporting grain (*The Wilmington*, 48 Fed. Rep. 566); a floating elevator (*The Hezekiah Baldwin*, 8 Ben. 556.) See also *The Northern Belle*, (9 Wall. 526;) *The Alabama*, (22 Fed. Rep. 449;) *Ednor* v. *Greco*, (3 Fed. Rep. 411.)

Again, in *Ex parte Boyer*, (109 U. S. 629,) this court held the jurisdiction of the admiralty court to extend to a collision between two canal boats of more than twenty tons burthen, one of which was in tow and the other propelled by steam. If the jurisdiction of the admiralty court in the case under consideration depends, as it must, upon the facts that the cause of action arose upon the canal, and upon canalboats navigating such canal, the case of Boyer would seem to be decisive of this.

So far as the Congress of the United States and the Parliament of England have incidentally spoken upon the subject, they have fixed a criterion of size as to what shall be considered a vessel within the admiralty jurisdiction far below the tonnage of an ordinary canalboat. By the original Judiciary Act of 1789, section nine, (1 Stat. 77,) jurisdiction was given to the District Courts of all seizures made "on waters which are navigable from the sea by vessels of ten tons or more burthen;" and by the act of February 26, 1845, (5 Stat. 726,) (now obsolete, *The Eagle*, 8 Wall. 15,) admiralty jurisdiction was given to vessels navigating the Great Lakes and their connecting waters of twenty tons burthen and upwards. By section 4311, R. S., vessels of twenty tons and upwards, enrolled and licensed, and vessels of less than twenty tons, not enrolled but licensed, shall be deemed vessels of the United States; and by section 4520 all vessels of fifty tons or upwards are required to ship their seamen under written articles. By the English Merchants' Shipping Act of 1854, the word "ship shall include every description of vessel used in navigation, not propelled by oars;" and a similar description is given of vessels within the admiralty jurisdiction, in the Admiralty Court Act of 1861.

It seems, however, to be supposed that the fact that boats engaged in traffic upon the Erie Canal are drawn by horses is sufficient of itself to exclude them from the jurisdiction of the admiralty courts. This, however, is an argument which appeals less to the reason than to the imagination. So long as the vessel is engaged in commerce and navigation it is difficult to see how the jurisdiction of admiralty is affected by its means of propulsion, which may vary in the course of the same voyage, or with new discoveries made in the art of navigation. Thus, canalboats, upon their arrival at Albany, are at once relieved of their horses, and taken by a steamer in tow to New York or Jersey City. To hold that such boats are not within the admiralty jurisdiction of the courts, while on a trip down the Hudson River, would require us to overrule a large number of cases in this court, in which it was assumed by both parties and the court that for damages sustained by collision with other vessels they were entitled to pursue the wrongdoer in courts of admiralty. (*The Quickstep* 9 Wall. 665; *The Syracuse*, 12 Wall. 167; *The Atlas*, 93 U. S. 302; *The L. P. Dayton*, 120 U. S. 337; *The E. A. Packer*, 140 U. S. 360.) But it would seem like sticking in the bark to hold that a canalboat might recover for a collision while in tow of a tug, but might not recover while in tow of a horse. The case does not raise the question whether hay and oats furnished the horses are necessaries within the meaning of the admiralty law, though a casuist might have difficulty in drawing a distinction between coal and oil furnished to one engine of propulsion and hay and oats to another, or between food furnished to a crew and food furnished to the horses.

Replying to the suggestion that, if jurisdiction were sustained of repairs upon a canalboat drawn by horses, it would apply with equal propriety to a blacksmith's bill for shoeing the horses, it is only necessary to say that, for incidental repairs made on land to articles of a ship's furniture or machinery, it has never been supposed that a court of admiralty had jurisdiction. Indeed, it would seem extremely doubtful if liens for these trivial bills were intended to be created by the State law. Articles removed from a vessel and repaired or renovated upon land at the shop of the artisan, stand upon quite a different footing from repairs made upon the vessel herself, and are the subject of a possessory lien at common law.

The truth is, the present employment of horses is a mere accident, and likely to be changed at any time by an enlargement of the canal, now in contemplation, when steam or electricity will probably supplant the present methods of locomotion. The modern law of England and America rules out of the admiralty jurisdiction all vessels propelled by oars, simply because they are the smallest class and beneath the dignity of a court of admiralty; but long within the historic period, and for at least seven hundred years, the triremes and quadriremes of the Greek and Roman navies were the largest and most powerful vessels afloat.

It is true the amount involved in this case is a small one, but the jurisdiction of the admiralty court has never been determined by the amount, though appeals from the District Court to the Supreme Court were first limited to cases involving $300, subsequently reduced to $50, and finally, by the Court of Appeals act, allowed apparently in all cases regardless of amount. So, also, cases may be brought under the patent and copyright laws, quite irrespective of the amounts involved.

3. As heretofore observed, the exclusive jurisdiction of the admiralty court in this case was attacked upon the grounds, already discussed, that artificial canals and the vessels plying thereon are not within its jurisdiction. A further suggestion, however, is made that the contract in this case was not only made on land but was to be performed on land, and was in fact performed on land. This argument must necessarily rest upon the assumption that repairs put upon a vessel while in dry dock are made upon land. We are unwilling to admit this proposition. A dock is an artificial basin in connection with a harbor, used for the reception of vessels in the taking on or discharging of their cargoes, and provided with gates for preventing the rise and fall of the waters occasioned by the tides, and keeping a uniform level within the docks. A dry dock differs from an ordinary dock only in the fact that it is smaller, and provided with machinery for pumping out the water in order that the vessel may be repaired. All injuries suffered by the hulls of vessels below the water line, by collision or stranding, must necessarily be repaired in a dry dock, to

prevent the inflow of water, but it has never been supposed, and it is believed the proposition is now for the first time made, that such repairs were made on land. Had the vessel been hauled up by ways upon the land and there repaired a different question might have been presented, as to which we express no opinion; but as all serious repairs upon the hulls of vessels are made in dry dock, the proposition that such repairs are made on land would practically deprive the admiralty courts of their largest and most important jurisdiction in connection with repairs. No authorities are cited to this proposition and it is believed none such exist.

Suppose, for instance, it were believed that the repairs could be made upon this vessel without going into dry dock, but it was afterwards discovered that the injuries were more extensive and that a dry dock were necessary; would a court of admiralty thereby be deprived of jurisdiction? Or, suppose such repairs were made in a floating dry dock, as sometimes happens, would they be considered as made upon land or water? Or, suppose they were made in dry dock upon a seagoing vessel?

There is no doubt of the proposition that a dry dock itself is not a subject of salvage service or of admiralty jurisdiction, because it is not used for the purpose of navigation. That was settled in *Cope* v. *Vallette Dry Dock Co.*, (119 U. S. 625.) But the case was put upon the express ground that a dry dock was like a ferry bridge or sailors' floating meeting house, and was no more used for the purposes of navigation than a wharf or a warehouse projecting into or upon the water.

4. Suggestion is also made that the admiralty jurisdiction of the Federal courts does not extend to contracts for the repair of vessels engaged wholly in commerce within a State. It is true that as late as 1858, in *The Fashion*, (*Allen* v. *Newberry*, 21 How. 244,) it was held that, under the act of Congress of 1845, extending jurisdiction of the Federal courts to vessels employed in navigation upon the Great Lakes, between ports and places in different States, it did not extend to the case of a shipment of goods from a port in one State to another port in the same State; and that in the case of *The Goliah*, (*McGuire* v. *Card*, 21 How. 248,) the same doctrine was extended to a contract for supplies furnished to a vessel engaged in trade between different ports in the State of California. These cases, however, were practically overruled by that of *The Belfast*, (7 Wall. 624,) in which a State statute, similar to the statute of New York involved in this case, for a breach of contract of affreightment between ports in the same State, (Alabama,) was held to be unconstitutional and void, although the shipment was between ports of the same State. The contention was distinctly made (p. 635) that the State court had jurisdiction because the contract of affreightment was between ports and places in the same State, but it was as distinctly disclaimed by the

court, and the prior cases practically overruled. So also in *Ex parte Boyer*, (109 U. S. 629,) the doctrine of *The Belfast* was reiterated and applied to a collision between canalboats, Mr. Justice Blatchford saying: "That it makes no difference as to the jurisdiction of the District Court, that one or the other of the vessels was at the time of the collision on a voyage from one place in the State of Illinois to another place in the same State." To the same effect are *The Daniel Ball*, (10 Wall. 557;) *The Montello*, (20 Wall 430;) *The Commerce*, (1 Black, 574,) and *Lord* v. *Steamship Co.*, (102 U. S. 541.)

So, too, in *In re Garnett*, (141 U. S. 1,) the limited liability act was held to be a part of the law of the United States, enforceable upon navigable rivers above tide waters, and applicable to vessels engaged in commerce between ports in the same States. In delivering the opinion Mr. Justice Bradley said (p. 15): "In some of the cases it was held distinctly that this jurisdiction does not depend upon the question of foreign or interstate commerce, but also exists where the voyage or contract, if maritime in character, is made and is to be performed wholly within a single State"—citing all the cases noticed in this opinion.

In *The E. M. McChesney*, (8 Ben. 150,) Judge Blatchford, more recently of this court, sustained a libel against a canalboat for non-delivery of a cargo shipped on a canalboat in Buffalo to be carried to New York. In that case, as in this, it was contended that neither the canal nor the canalboat were subjects of the admiralty jurisdiction. The case is directly in point.

It is believed that since the case of *The Belfast* the distinction has never been admitted between contracts concerning vessels engaged in trade between ports of the same and between ports of different States. Of course, nothing herein said is intended to trench upon the common law jurisdiction of the State courts, which is, and always has been, expressly saved to suitors "where the common law is competent to give it." (R. S. sec. 563, sub. 8.) By that law an action will always lie against the master or owner of the vessel, and, if the laws of the State permit it, the vessel may be attached as the property of the defendant in the case. But, as remarked by Mr. Justice Miller in *The Hine* v. *Trevor*, (4 Wall. 555, 571): "A statute providing that a vessel may be sued and made defendant without any proceeding against the owners, or even mentioning their names, partakes of all the essential features of an admiralty proceeding *in rem*, of which exclusive jurisdiction is given to the District Courts of the United States." See also *The Moses Taylor*, (4 Wall. 411, 427,) wherein it is said: "The action against the boat by name, authorized by the statute of California, is a proceeding in the nature and with the incidents of a suit in admiralty. The distinguishing and characteristic

feature of such suit is that the vessel or thing proceeded against is itself seized and impleaded as the defendant, and is judged and sentenced accordingly."

In *The Belfast*, (7 Wall. 624,) a proceeding was taken in a State court in Alabama for the enforcement of a lien for the loss of certain cotton. The statute was, in its essentials, a reproduction of the New York statute under consideration. Plaintiffs contended that, admitting the admiralty courts had jurisdiction, the State courts had concurrent jurisdiction to afford the parties the same remedies. It was held that State legislatures had no authority to create a maritime lien, or to enforce such a lien by a suit or proceeding *in rem*, as practiced in the admiralty courts.

In all these cases the distinction is sharply drawn between a common law action *in personam* with a concurrent attachment against the goods and chattels of the defendant, subject, of course, to any existing liens, and a proceeding *in rem* against the vessel as the debtor or "offending thing," which is the characteristic of a suit in admiralty. The same distinction is carefully preserved in the general admiralty rules prescribed by this court; rule second declaring that in suits *in personam* the mesne process may be "by a warrant of arrest of the person of the defendant, with a clause therein that if he cannot be found, to attach his goods and chattels to the amount sued for;" and rule nine, that in suits and proceedings *in rem* the process shall be by warrant of arrest of the ship, goods or other things to be arrested, with public notice to be given in the newspapers. The former is in strict analogy to a common law proceedings and is a concurrent remedy. The latter is a proceeding distinctively maritime, of which exclusive jurisdiction is given to the admiralty courts.

That the New York statute belongs to the latter class is evident from the code, by which, upon written application to a justice of the Supreme Court, a warrant is issued for the seizure of the vessel, and for an order to show cause why it shonld not be sold to satisfy the lien. The warrant in this case recites "that an application had been made to me . . . for a warrant to enforce a lien against the canalboat or vessel called Rob't W. Parsons," and commands the sheriff "to seize and safely keep said canalboat to satisfy said claim . . . as above set forth, to be a lien upon said vessel according to law." The proceeding authorized by the New York statute in question was held to be in the nature of a suit in admiralty in *The Josephine*, (39 N. Y. 19,) and *Brookman* v. *Hamill*, (43 N. Y. 554.) The proceeding is also similar to that provided by the laws of Massachusetts, which. in the case of *The Glide*, (167 U. S. 606,) was held to be, as to repairs and supplies in the home port, exclusively within the admiralty jurisdiction of the Federal courts.

As section 30 of the New York statute excludes a debt which is not a lien by the maritime law, and section 3419, providing for their enforce-

ment, also excludes liens founded upon a maritime contract, we think the State courts were in error in enforcing this lien, thereby holding that a contract for the repair of a canalboat while lying in the Erie Canal was not a maritime contract, and that the statute so construed is *pro tanto* unconstitutional.

The judgment of the court below must, therefore, be reversed, and the case remanded to the Supreme Court of the State of New York for further proceedings not inconsistent with this opinion.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 16.—October Term, 1903.

Clara Perry, Plaintiff in Error, vs. Cornelius L. Haines. } In error to the Supreme Court of the State of New York.

[October 26, 1903.]

Mr. Justice Brewer, dissenting.

I am unable to concur in the opinion and judgment in this case, and deem the matter of sufficient importance to justify an expression of my reasons therefor.

It is well to understand exactly the facts of the case. Sections 30 and 35 of the Laws of New York, 1897, chap. 418, are quoted in the opinion of the court. By the first a lien is given on a seagoing or oceanbound vessel, if the amount of the debt is $50 or upwards, and on any other vessel if $15 or upwards. And among other things the lien is for work done or material or other articles furnished for the building or repairing of such vessel. By the second, the lien, if founded upon a maritime contract, can be enforced only in the United States courts; if not founded upon such a contract, by proceedings in the State courts, in the manner provided by the Code of Civil Procedure.

The canal boat, upon which the lien was claimed, was not a seagoing or oceanbound vessel, but engaged in carrying merchandise between Buffalo and other ports within the limits of the State of New York. The statements in two affidavits, one of the plaintiff and the other the defendant, (the plaintiff being the owner of the claim and the defendant the owner of the boat,) were, by stipulation between the parties, agreed upon as the facts in the case. No question was made of the justice of the claim or the liability of the owner of the boat therefor. The work consisted in "permanent repairs upon the boat," in this that "a part of one side of said boat was taken out and her cheek plank removed and the side of the boat and the cheek plank were rebuilt into said boat." The work was done upon dry docks belonging to the plaintiff in the village of Middleport, a village located on the Erie Canal. The boat at the time was on a trip from New York to Buffalo. The value of these permanent repairs was $154.40, and the boat when thus repaired sold for only $155. Further, according to the bill of particulars, 727 feet of lumber, 47 bolts, 165 pounds of spikes and 265 pounds of iron, as well as 334 hours of labor, which, at 10 hours

a day, amounted to over 33 days, were used in the work. The size of the canal boat is not given, but from this statement as to the amount and value of the work it is evident that the repairs might well be considered a rebuilding of the boat. Be that as it may, the contract was made on land, to be performed on land, and was in fact performed on land. The plaintiff was a canal-boat builder, having dry docks and yards at the village of Middlepor nd on these dry docks the work was done.

Was this a maritime contract? A contract for building a ship or supplying materials for her construction is not a maritime contract. (*People's Ferry Co. of Boston* v. *Beers*, 20 How. 393; *Roach* v. *Chapman*, 22 How. 129.) In the former of these cases the court said (p. 402): "So far from the contract being purely maritime, and touching rights and duties appertaining to navigation, (on the ocean or elsewhere,) it was a contract made on land, to be performed on land."

So in *Sheppard* v. *Steele*, (43 N. Y. 52, 56):

"The claim here is for labor upon the hull of a vessel, while in the process of construction, before launching, while yet on the land. This is not a maritime contract. It is one relating to a subject on the land, and it is to be performed on the land. The admiralty courts have no jurisdiction for its enforcement. (*Foster* v. *The Richard Busteed*, 100 Mass. 409.)"

That a dry dock is to be considered as land in the maritime law seems to be clear from the decision of this court in *Cope* v. *Vallette Dry Dock Company*, (119 U. S. 625,) in which it was held that a dry dock was not a subject of salvage service, Mr. Justice Bradley, speaking for the court, saying (p. 627): "A fixed structure, such as this dry dock is, not used for the purpose of navigation, is not a subject of salvage service, any more than is a wharf or a warehouse when projecting into or upon the water." The dry dock referred to in this case was a floating dock fastened by chains to the bank of the Mississippi River. Whether the dock in this case was likewise fastened by chains or a structure permanently attached to the land does not appear. Certainly it cannot be presumed, for the purpose of reversing the judgments of the State courts, that it was not permanently attached to and as much a part of the land as a bridge or a wharf.

In this connection reference may be had to *Bradley* v. *Bolles*, (1 Abbotts, Admiralty, 569,) in which it was held by Judge Betts that work done upon a vessel in a dry dock in scraping her bottom preparatory to coppering her is not of a maritime character, and that compensation for such labor cannot be recovered in a court of admiralty. Judge Betts says in his opinion that the court had repeatedly held that contracts of that description do not constitute a lien upon vessels which can be enforced in admiralty. In *Boon* v. *The Hornet*, (Crabbe, 426,) a canal

boat was hauled on shore on the bank of a river where the tide ebbed and flowed, and there repaired. It was held that, although the law of the State gave a lien, the admiralty court would not take cognizance of such a claim.

So also where damage is done wholly upon the land admiralty will not take jurisdiction, although the cause of the damage originated on waters subject to its jurisdiction. (*The Plymouth*, 3 Wall. 20; *Ex parte Phenix Insurance Company*, 118 U. S. 610; *Johnson* v. *Chicago & Pacific Elevator Company*, 119 U. S. 388.) Two of these were cases in which fire originating on a vessel communicated to property on land, and the owner of the property attempted to recover in the admiralty courts, but their jurisdiction was denied. The other was where a vessel, while being towed in the Chicago River, struck and damaged a building on the land. For this damage an action was maintained in the State court and the jurisdiction of that court upheld. It would seem to follow from these cases that a contract made on land, to be performed on land, and in fact performed on land, is not subject to admiralty jurisdiction. And, likewise, that a tort resulting in injury to something on the land is also not subject to admiralty jurisdiction, although the tort was on waters subject to such jurisdiction. It is true many cases may be found in which it is stated generally that admiralty has jurisdiction of claims for repairs upon vessels, but evidently that contemplates repairs made while the vessel is in the water.

In this connection I notice a statement in the opinion of the court, that "for incidental repairs made on land to articles of a ship's furniture or machinery it has never been supposed that a court of admiralty had jurisdiction." But if an engine be taken out of a steam tug and repaired on land, and a court of admiralty has no jurisdiction of the claim for such repairs, has it any more claim when the hull of a canal boat is brought on to the land and the side of it replaced? In each case the contract is one performed ou the land, and although having ultimate relation to navigation on the water it is not of itself directly connected with navigation.

Further, no objection can of course be made to the New York statutes. Section 30 gives a lien, and no one questions the power of a State to provide for such a lien to be enforced in some court. Section 35 provides that if the lien is founded on a maritime contract it is enforcible only in the courts of the United States. Surely that is as far as the most strenuous advocates of an extended admiralty jurisdiction can claim, and it is only in those cases, as the section provides, where the lien is not founded upon a maritime contract, that the State courts may exercise jurisdiction. The State courts of New York, from the trial through the Supreme to the Court of Appeals, have all held that this lien was not founded upon a maritime contract. Upon what just ground can this court disturb this finding? If it be a pure question of fact, we have often held that we are

bound by the action of the State courts. If it is one partly of fact and partly of law, then surely we ought not, except in the clearest case, to reverse those courts.

Still again, it has been repeatedly declared by this court, following the statute, that a claim cognizable in admiralty can be enforced in the State courts by common law remedies. Now, whatever may be the nature of the contract, (the foundation of the lien in this instance,) the only provision in section 35 is that it can be enforced in the manner provided by the Code of Civil Procedure.

Turning to the Code of Civil Procedure, we find in Title IV of chapter 23 the provisions for the enforcement of liens on vessels. These provisions are, first, the lienor is to make a written application to a justice of the Supreme Court for a warrant to enforce the lien and to collect the amount thereof, which application must state substantially the same facts as in an ordinary pleading to enfore a mechanic's lien on buildings. (Section 3420.) Upon the filing of such application the justice is directed to issue a warrant for the seizure of the vessel, and at the same time to grant an order to show cause why the vessel should not be sold to satisfy the lien. A copy of the order and the application for the warrant must be served personally upon the master or other person in charge of the vessel, "and personally upon the owner and consignee of such vessel if a resident of the State, or if not a resident of the State, by mail addressed to such owner or consignee at his last known place of residence, within ten days after the execution of such warrant." (Sections 3422 and 3423.) By section 3424, the applicant is also required to give notice in some paper published in the county where the vessel was seized, "stating the issuance of the warrant, the date thereof, the amount of the claim specified therein, the name of the applicant, and the time and place of the return of the order to show cause." By section 3425, the owner or consignee, or any other person interested, may appear and contest the claim of the lienor. Subsequent provisions authorize an appeal, as in other civil cases. The record shows that the proceedings had were substantially in accordance with these provisions. The application, called a petition, was filed, setting forth all the facts required, including the name of the owner. An order of sale and an order to show cause were both issued, and the owner appeared in response to such notice. It is true there is in the record no proof of service upon the owner, but the fact of her appearance to contest the application is shown. It is also true that she did not after her appearance contest the amount of the claim, but contented herself with challenging the jurisdiction of the court. But such action on her part does not obviate the fact that the proceedings on behalf of the petitioner were substantially those to collect a civil debt by attachment against the property of the defendant. In this connection reference may

be had to *The Hine* v. *Trevor*, (4 Wall. 555,) in which an Iowa statute was held unconstitutional, but, as said by Mr. Justice Miller, speaking for the court, on page 571, describing the remedy provided for by that statute:

"The remedy pursued in the Iowa courts, in the case before us, is in no sense a common law remedy. It is a remedy partaking of all the essential features of an admiralty proceeding *in rem*. The statute provides that the vessel may be sued and made defendant without any proceeding against the owners, or even mentioning their names. That a writ may be issued and the vessel seized, on filing a petition similar in substance to a libel. That after a notice in the nature of a monition, the vessel may be condemned and an order made for her sale, if the liability is established for which she was sued. Such is the general character of the steamboat laws of the Western States."

But in the very same case it was also said by the learned justice:

"While the proceeding differs thus from a common law remedy, it is also essentially different from what are in the West called suits by attachment, and in some of the older States foreign attachments. In these cases there is a suit against a personal defendant by name, and because of inability to serve process on him on account of non-residence, or for some other reason mentioned in the various statutes allowing attachments to issue, the suit is commenced by a writ directing the proper officer to attach sufficient property of the defendant to answer any judgment which may be rendered against him. This proceeding may be had against an owner or part owner of a vessel, and his interest thus subjected to sale in a common law court of the State.

"Such actions may, also, be maintained *in personam* against a defendant in the common law courts, as the common law gives; all in consistence with the grant of admiralty powers in the ninth section of the Judiciary Act."

So in the case at bar, we have a proceeding authorized by the statute in which the owner is named, and notice required to be served on him, and notice in fact served, an appearance of the defendant and an opportunity to try the merits of the claim, as in any other civil action.

That a State has full control over the practice and procedure to be pursued in its courts has been often adjudged. Thus in *Missouri* v. *Lewis*, (101 U. S. 22, 31,) it was said by Mr. Justice Bradley, speaking for the court:

"We might go still further, and say, with undoubted truth, that there is nothing in the Constitution to prevent any State from adopting any system of laws or judicature it sees fit for all or any part of its territory."

Again, in *Ex parte Reggel*, (114 U. S. 642, 651,) Mr. Justice Harlan used these words:

"That Commonwealth [Pennsylvania] has the right to establish the forms for pleadings and process to be observed in her own courts, in both civil and criminal cases, subject only to those provisions of the Constitution of the United States involving the protection of life, liberty and property in all the States of the Union."

So Mr. Justice White, speaking for the court, in *Iowa Central Railway Company* v. *Iowa*, (160 U. S. 389, 393,) declared:

"But it is clear that the Fourteenth Amendment in no way undertakes to control the power of a State to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided."

See, also, *Chicago, Burlington & Quincy Railroad* v. *Chicago*, (166 U. S. 226;) *Backus* v. *Fort Street Union Depot Company*, (169 U. S. 557, 570;) *Brown* v. *New Jersey*, (175 U. S. 172;) *League* v. *Texas*, (184 U. S. 156, 158.)

But it is said that while this is generally true there is this limitation, that the State cannot, as to claims against vessels, adopt the procedure now obtaining in admiralty cases, or, without actual notice to the owner, seize and sell a vessel in satisfaction of a lien. Of course, it is not necessary to determine that question, because, as I have stated, there was notice to the owner and an appearance by her, and such proceeding was authorized by the statute. But even if it was not so authorized, and was simply a direct proceeding to enforce a lien upon the vessel and sell it in satisfaction thereof, I insist that the State courts may entertain jurisdiction. It was held in *Arndt* v. *Griggs*, (134 U. S. 316,) that a State may provide by statute that the title to real estate within its limits shall be settled and determined by a suit in which the defendant, being a non-resident, is only brought into court by publication. The question was discussed at length, the authorities reviewed, and the conclusion reached that the State had such jurisdiction over real estate within its limits that it could determine the title without the personal presence of the owner. But has the State any less jurisdiction over personalty situated within its borders than it has over real estate? Upon what theory of State power can it be held that a State may divest a non-resident of his title to real estate and not a non-resident of his title to personal property? There seems to be a contention that there is a peculiar sanctity in the form of admiralty proceedings which excludes the State from resort to them, but the jurisdiction of the admiralty courts does not depend on the form of the procedure. Congress may if it see fit change entirely that procedure. As said by Chief Justice Taney in *The Genesee Chief*, (p. 460):

"The Constitution declares that the judicial power of the United States shall extend to 'all cases of admiralty and maritime jurisdiction.' But it does not direct that the court shall proceed according to ancient and established forms, or shall adopt any other form or mode of practice. The grant defines the subjects to which the jurisdiction may be extended by Congress. But the extent of the power as well as the mode of proceeding in which that jurisdiction is to be exercised, like the power and practice in all the other courts of the United States, are subject to the regulation of Congress, except where that power is limited by the terms of the Con-

stitution or by necessary implication from its language. In admiralty and maritime cases there is no such limitation as to the mode of proceeding, and Congress may therefore in cases of that description give either party right of trial by jury, or modify the practice of the court in any other respect that it deems more conducive to the administration of justice."

Suppose Congress should exercise this power and substitute for the procedure in admiralty courts the common law practice, and make it the only method of procedure therein. What would become of the argument that the State cannot resort to the procedure obtaining in admiralty courts for enforcing the rights of claimants? Must it then desist from common law remedies because they have been adopted in admiralty and go back to that form of procedure now obtaining in the admiralty courts? Can it be that the power of a State to vest jurisdiction in one of its courts depends upon the form of procedure which it adopts?

Why should we be so anxious to drive parties having small claims away from their local courts to courts not infrequently held at a great distance? Why should we be so anxious to force litigants into a court where there is no constitutional right to a trial by jury? I for one believe that the right of trial by jury is not to be taken away from a claimant unless it be a case coming clearly within the well-established limits of equity and admiralty cases. I do not like to see these provisions which have so long been the boast of our Anglo-Saxon system of procedure frittered away by either legislative or judicial action.

Further, it seems a great hardship that a party who has been brought into a court of general jurisdiction, with full opportunity to litigate the claim of the plaintiff, and has carried the case through all the courts of the State without ever disputing its validity, should now obtain a reversal of the entire proceedings when such reversal may operate to prevent the collection of the debt. By section 33 of chapter 418, heretofore referred to, the lien expires at the expiration of twelve months from the time the debt was contracted. Of course, the lien is now gone. The canal boat has very likely disappeared and the owner may be entirely irresponsible.

Even if these objections to the opinion and judgment of the court are wholly without foundation, there is still another, broader and deeper. I do not believe that under the true interpretation of the Constitution the admiralty jurisdiction of the Federal courts extends to contracts for the repairs of vessels engaged wholly in commerce within a State. I recognize the fact that this court has decided in a series of cases, commencing with *The Genesee Chief*, (12 How. 443,) that the admiralty jurisdiction of the Federal courts is not limited by tide waters, as admiralty jurisdiction was understood to be limited both in Great Britain and in this country at the time the Constitution was framed, but extends to all navigable waters of the United States, and I have no disposition to question the correctness

of those decisions, or in any way limit their scope. But what is admiralty? It is the law, not of the water, but of the seas.

As said in Edwards on Admiralty Jurisdiction, p. 29:

"But its jurisdiction may be said to rest generally on the following considerations: First, the nature of the property to be adjudicated upon; secondly, the question to be decided; thirdly, the origin of the cause; and fourthly, the locality; and these must be *of the sea* to give the admiralty a jurisdiction."

So also in *Edwards* v. *Elliott*, (21 Wall. 532, 553,) is this declaration of this court:

"Maritime contracts are such as relate to commerce and navigation, and unless a contract to build a ship is to be regarded as a maritime contract, it will hardly be contended that a contract to furnish the materials to be used in accomplishing that object can fall within that category, as the latter is more strictly a contract made on land, and to be performed on land, than the former, and is certainly one stage further removed from any immediate and direct relation to commerce and navigation."

It grew up out of the fact that the ocean is not the territorial property of any nation, but the common property of all; that vessels engaged in commerce between the different nations ought, so far as possible, to be subject to a uniform law, and not annoyed by the conflicting local laws and customs of the several nations which they visit. I do not mean that the several maritime nations did not establish different rules, or that there is not some dissimilarity in their maritime laws, for as long as each nation is the master of its own territory it may legislate as it sees fit in reference to maritime matters coming within its jurisdiction, and yet this does not abridge the fact that admiralty grew up out of the thought of having a common law of the seas. It was well said by Mr. Justice Bradley in *The Lottawanna*, (21 Wall. 558, 572):

"Perhaps the maritime law is more uniformly followed by commercial nations than the civil and common laws are by those who use them. But, like those laws, however fixed, definite and beneficial the theoretical code of maritime law may be, it can have only so far the effect of law in any country as it is permitted to have. But the actual maritime law can hardly be said to have a fixed and definite form as to all the subjects which may be embraced within its scope. Whilst it is true that the great mass of maritime law is the same in all commercial countries, yet, in each country, peculiarities exist either as to some of the rules or in the mode of enforcing them. Especially is this the case on the outside boundaries of the law, where it comes in contact with or shades off into the local or municipal law of the particular country and affects only its own merchants or people in their relations to each other. Whereas, in matters affecting the stranger or foreigner, the commonly received law of the whole commercial world is more assiduously observed—as, in justice, it should be. No one doubts that every nation may adopt its own maritime code. France may adopt one, England another, the United States a third; still, the convenience of the commercial world, bound together, as it is, by mutual rela-

tions of trade and intercourse, demands that, in all essential things wherein those relations bring them in contact, there should be a uniform law founded on natural reason and justice. Hence the adoption by all commercial nations (our own included) of the general maritime law as the basis and groundwork of all their maritime regulations. . . . Each State adopts the maritime law, not as a code having any independent or inherent force, *proprio vigore*, but as its own law, with such modifications and qualifications as it sees fit. Thus adopted and thus qualified in each case, it becomes the maritime law of the particular nation that adopts it. And without such voluntary adoption it would not be law. And thus it happens that from the general practice of commercial nations in making the same general law the basis and groundwork of their respective maritime systems, the great mass of maritime law which is thus received by these nations in common comes to be the common maritime law of the world."

In the opinion of Chief Justice Taney, in *The Genesee Chief, supra*, in which this court for the first time held that the jurisdiction of the admiralty courts extended above tide water, the argument is thus stated (p. 454):

"In England, undoubtedly the writers upon the subject, and the decisions in its courts of admiralty, always speak of the jurisdiction as confined to tide water. And this definition in England was a sound and reasonable one, because there was no navigable stream in the country beyond the ebb and flow of the tide; *nor any place where a port could be established to carry on trade with a foreign nation*, and where vessels could enter or depart with cargoes. In England, therefore, tide water and navigable water are synonymous terms, and tide water, with a few small and unimportant exceptions, meant nothing more than public rivers, as contradistinguished from private ones; and they took the ebb and flow of the tide as the test, because it was a convenient one, and more easily determined the character of the river. Hence the established doctrine in England, that the admiralty jurisdiction is confined to the ebb and flow of the tide. In other words, it is confined to public navigable waters.

"At the time the Constitution of the United States was adopted, and our courts of admiralty went into operation, the definition which had been adopted in England was equally proper here. In the old thirteen States the far greater part of the navigable waters are tide waters. And in the States which were at that period in any degree commercial, and where courts of admiralty were called on to exercise their jurisdiction, every public river was tide water to the head of navigation. *And, indeed, until the discovery of steamboats, there could be nothing like foreign commerce upon waters with an unchanging current resisting the upward passage.* The courts of the United States, therefore, naturally adopted the English mode of defining a public river, and consequently the boundary of admiralty jurisdiction. It measured it by tide water. And that definition having found its way into our courts, became, after a time, the familiar mode of describing a public river, and was repeated, as cases occurred, without particularly examining whether it was as universally applicable in this country as it was in England."

Again, as said by this court, in *The Propeller Commerce*, (1 Black, 574, 579):

"All such waters are, in truth, but arms of the sea, and are as much within the admiralty and maritime jurisdiction of the United States as the sea itself."

Such being the general nature of admiralty, and the jurisdiction of its courts being understood, at the time of the adoption of our Constitution, to relate to the ocean and the arms thereof, with the view of uniformity in respect to international commerce, what was granted to the general government when to its courts was given exclusive jurisdiction over "all cases of admiralty and maritime jurisdiction?" Did it mean that the judicial power of the United States should extend to controversies respecting contracts and torts concerning every vessel upon all the waters of the several States? It is not pretended that it did. Take an inland lake, wholly within the limits of the territory of a State and having no connection with the ocean. The admiralty jurisdiction of the Federal courts does not extend to contracts or collisions in respect to or upon such waters. (*The Montello*, 11 Wall. 411.) But why should the admiralty jurisdiction of the United States courts not extend to landlocked waters wholly within the limits of a State when it does extend to waters having connection with the ocean? Clearly, as shown by the quotation from Chief Justice Taney's opinion in *The Genesee Chief*, because since the use of steam foreign commerce may extend into such waters, and therefore the full exercise of the admiralty jurisdiction which concerns the law of the sea requires that that jurisdiction should be co-extensive with waters which may be traversed by oceangoing vessels. It matters not whether such waters are natural or artificial highways, canals or rivers. If they open to the ocean or are connected with the ocean they become, or may become, the highways of ocean commerce, and therefore in order that the admiralty jurisdiction may be fully exercised it was held, and rightfully, in *The Genesee Chief*, that it extends to all navigable waters of the United States. Take the case of a landlocked lake within the limits of New York. Unquestionably the State has full jurisdiction over its waters and the vessels traversing them. The admiralty courts of the United States would not assume any jurisdiction. Can it be that if the State of New York constructs a canal by which the waters of that lake are connected with the ocean, it is deprived of its full jurisdiction over those waters and the vessels traversing them? Doubtless to a certain extent and for the purpose of fully effectuating the admiralty jurisdiction of the nation the Federal courts in admiralty would have a certain jurisdiction. Take the case of *The Diana*, (Lush. 539,) in which Dr. Lushington assumed jurisdiction over a collision between two British vessels in the Great North Holland Canal. Can it for a moment

be supposed that the English admiralty courts would take jurisdiction of a claim for repairs made on a Dutch canal boat in such canal; or, to bring the case nearer home, would the British admiralty courts take jurisdiction of the claim of this plaintiff for the work done upon the defendant's canal boat? Or would the admiralty courts of the United States take jurisdiction of a like action brought for repairs done to a canal boat on the canal between Liverpool and Manchester? Clearly these matters are of local significance, and of local significance alone.

If it be said that the State of New York in the case cited would, notwithstanding the construction of a canal between the thitherto landlocked lake and the ocean, still retain jurisdiction to enforce claims for repairs, but only by proceedings according to the course of the common law, I reply that, while it remained still a landlocked lake with no connection with the ocean, the State of New York, having full jurisdiction, could, as we have seen, resort to any proceeding it saw fit for the enforcement of claims for repairs. It has full control over its own procedure and may change and alter it as it sees fit.

Can it be that, having such power before the waters are connected with the ocean, it loses that power by the act of connecting the waters of the ocean, and is deprived of its thitherto unquestioned control over the remedies it chooses to provide?

But it is said that given the fact that the admiralty jurisdiction of the Federal courts extends to all navigable waters of the United States, and that such jurisdiction is exclusive, it follows that the moment any navigable waters are connected with the ocean the jurisdiction of the Federal courts over those waters becomes exclusive. In this case we touch upon the difference between contracts and torts. As said in *The Belfast*, (7 Wall. 624, 637):

"Principal subjects of admiralty jurisdiction are maritime contracts and maritime torts, including captures *jure belli*, and seizures on water for municipal and revenue forfeitures.

"(1.) Contracts, claims, or service, purely maritime, and touching rights and duties appertaining to commerce and navigation, are cognizable in the admiralty.

"(2.) Torts or injuries committed on navigable waters, of a civil nature, are also cognizable in the admiralty courts.

"Jurisdiction in the former case depends upon the nature of the contract, but in the latter it depends entirely upon locality."

We have here no matter of torts, but simply one of contract. The question, therefore, is not one of locality, but one of the nature of the contract. The contract was for work done not on an oceangoing vessel or one capable of engaging in foreign commerce, or, like a tug, (*The Glide*, 167 U. S. 606,) one which can be used directly in assisting foreign commerce, but a canal boat necessarily used only on inland waters, and in fact only

so used. Can this fairly be adjudged a maritime contract? I think not. (*Wilson* v. *Lawrence*, 82 N. Y. 409; *Edwards* v. *Elliott*, 21 Wall. 582.) In addition to the fact that this boat was designed primarily for use upon a canal, to be drawn by animals moving on the land, the place at which the work was done is also worthy of consideration. While the admiralty jurisdiction may extend to canals, yet the United States have no such exclusive control over canals as over natural navigable waters. The canal was built by the State, is owned by the State, and it cannot for one moment be assumed that the national government can interfere to restrict the State as to the size of the canal, the depth of water, the construction of bridges, or other things in respect to which it has full control over the natural navigable waters. It seems an anomaly that when the State builds a waterway and owns a waterway, and has a general control over that waterway, it cannot provide as it sees fit for enforcing claims for work done on vessels navigating such highway when the vessels are of a character which prevents them being used for any foreign commerce,

Recapitulating: I dissent from the opinion and judgment of the court because, first, I think the contract, being made on land, for work to be done on land, and in fact done upon the land, is not a maritime contract, and therefore cannot be a subject of admiralty jurisdiction. Second, the proceeding, which was instituted was authorized by the statutes of the State, and in its essential features an ordinary proceeding according to the course of the common law, which may always be resorted to, even in respect to contracts which are of strictly a maritime nature. Third, because the grant to the national government over admiralty and maritime matters was in furtherance of commerce between this nation and others and designed to secure uniformity in respect thereto, and does not extend to contracts made in respect to vessels which are incapacitated from foreign commerce, designed and used exclusively for mere local traffic within a State.

I am authorized to say that the CHIEF JUSTICE and Mr. Justice PECKHAM concur in this dissent.

Mr. Justice HARLAN also dissents.

True copy.

Test:

Clerk Supreme Court, U. S.